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PARISH OF PORT PATRICK.

MAY 1772.







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PROOF led in the PROCESS, at  
the instance of the Elders and  
Parishioners of the Parish of  
Port Patrick:

A G A I N S T

MR WILLIAM MACMASTER.

PROOF led before the Presbytery of HAMILTON.

**C**OMPEARED AGNES SMITH, daughter to Andrew Smith, in- A  
dweller in Hamilton, a witness adduced for the prosecutors.—  
Objected against her, That in law or equity she cannot be received as  
a witness in this cause, not only in respect of her having emitted  
two separate declarations; one whereof, of date the 2d of April  
1765, before the Reverend Mr Hill, minister of the Barony parish of B  
Glasgow, wherein she actually declared, that one Thomas Waddel  
was the father of the child brought forth by her; and the other  
declaration at Glenluce, December 1765, before the session there;  
where she declared also, that the father of her child was a gentle-  
man in Camnethan parish, as appears from an extract of these de- C  
clarations produced herewith; but also she the said Agnes Smith  
bears Mr Macmaster malice or ill-will, in so far as she having  
alleged a private marriage to have happened betwixt him and her,  
and such having been refused by him, she showed her revenge so  
great, that she gave it out publicly, that the child brought forth D  
by her belonged to him, purposely to frustrate his settlement.  
And further, the said Agnes Smith was the first propagator against  
Mr Macmaster of the said scandalous accusation, was present at  
different times with his prosecutor or prosecutors, at consultations  
with writers, gave them information, and wrote fundry letters to E  
his prosecutors, furnishing them with facts tending to calumniate,

as

A as appears from a letter also mentioned in the extract. So from the whole, it is evident, as she has already judicially declared, that Mr Macmaster was not the child's father; and her evidence falls to be rejected as illegal and calumnious, in regard of her being frustrated of her intended marriage.

B To which it was answered for the prosecutors, That the objections are *felo de se*, trifling and irrelevant, and ought to be repelled, at least there is nothing in them but what is purgeable by the said Agnes Smith's oath alone: Nay, as to the allegation of her having averred a private marriage, or other allegations thereanent, they are the re-

C verse of malice or envy against, but demonstrate the highest regard imaginable for Mr Macmaster; and as the respondents have had no access or time to see and peruse the extract mentioned in the objections, and are sure and contend there is nothing in it that tends to incapacitate the said Agnes Smith, the objection ought to be

D repelled, and the witness offered received.

The said Agnes Smith, aged 29 years and upwards, being solemnly sworn, &c. depones, That about seven years ago, being servant to James Hunter of Frankfield, Mr Macmaster, who was chaplain there, got her with child: That soon after she left the

E house, and went to Glasgow, from which she did not return home, but met with Mr Macmaster in her way, who persuaded her to go back to Glasgow, and take a private room, which she did; first in a house, the name of which she has forgot; then in the house of James Speirs in Bunn's Wynd, where she slept with Mr Macmaster F three nights, in the character of man and wife. Depones, That after that, she removed to the house of Speirs's mother, where she was delivered of the child: That the second day after her delivery she was carried back by Mr Macmaster and James Speirs to Speirs's house, about twelve o'clock at night: That eight days after this

G she left Glasgow, and went with Mr Macmaster to Galloway, where she staid sometime in the house of Archibald Rodie, who lived very near to Mr Macmaster's father's house: That during her residence there she received money from Mr Macmaster. Depones,

H That when called before the session of Glenluce, she said that a gentleman in the parish of Shots was the father of her child. Immediately after this, she returned to Hamilton, where she received several unsigned letters from Mr Macmaster, and also money from him at different times, for the maintenance of the child, inclosed in letters directed to Margaret Riggs: That while in Galloway, she changed



changed her name, at desire of Mr Macmaster, from Smith to Muir. A  
 Being further interrogate, depones, That she had marriage-lines  
 from Mr Macmaster, but at his persuasion she had given them up  
 to him. Depones, She had frequent meetings with him in Gallo-  
 way, particularly among whins, about a mile from Stranrawer :  
 And that Margaret Riggs was along with her at two of these B  
 meetings : And that the said Margaret Riggs received in her pre-  
 sence, from Mr Macmaster, a bill for ten shillings Sterling, for her  
 trouble in attending the deponent to Galloway. Being further in-  
 terrogate, depones, That Mr Macmaster had no knowledge of her,  
 the deponent, in a carnal way, during the time she staid in Galloway C  
 with him, nor since that time. Depones also, That she had, at the  
 desire of Mr Macmaster, declared to Mr Hill, minister of the barony  
 parish of Glasgow, that one Waddel, a servant to Mr Maxwell mi-  
 nister at New Monkland, was the father of her child. *Causa scien-*  
*tiæ patet, &c.* D

ANDREW SMITH, indweller in Hamilton, a witness for the pur-  
 suers, married, aged 61 years, or thereby, being solemnly sworn,  
*&c.*—Objected against him, That he cannot be received an evidence  
 in this cause, not only in respect that he is father to Agnes Smith, E  
 claimant of Mr Macmaster as her husband; but also, he has acted  
 in this affair ultroneous, by emitting declaration, or sending messa-  
 ges to different persons, respecting the charge laid against Mr Mac-  
 master, of having begot a child with his daughter, and has been  
 present with some one or other of the parish of Stranrawer, his F  
 daughter, and Margaret Rigg, with writers in Hamilton, and o-  
 ther people, at consultations anent making up a charge against the  
 said Mr Macmaster for immoralities, and has received or been pro-  
 mised money for giving evidence in this cause; and for proving  
 all which, it is offered to be proved by his oath.—To which it was G  
 answered for the pursuers, That as the witness objected to, has al-  
 ready purged himself legally and deponed, the objections, although  
 they were otherwise relevant, as they are not, they cannot now be  
 received, but fall to be repelled.

The said Andrew Smith being interrogate, depones, That about H  
 fix years ago, one John Murray, an elder in the Barony parish,  
 came to the deponent's house in Hamilton, and desired his daugh-  
 ter, Agnes Smith, to go with him to his quarters and take a share of  
 a dram. In a short time after this, the deponent was sent for to  
 the same house, where Mr Murray asked the deponent, if he would  
 allow



- A allow his daughter to go to Glasgow and speak with Mr Macmaster?  
 Upon which the deponent asked, what business she had with Mr Macmaster? To which it was replied by Murray, That there was something between them which you and I know nothing about. Depones, That his daughter went down with Murray to Glasgow,  
 B and that he, the deponent, the second day after, got a letter from Glasgow, but does not remember by whom it was written, or if it was signed; only the porter who brought it, said he got it in the Gallowgate, from a young gentleman dressed in blue, desiring him to go to Glasgow: That he accordingly went: That he met with  
 C Mr Murray, and his the deponent's daughter: That Mr Murray urged him to send his daughter to Edinburgh, which he refused to do: That Mr Macmaster being sent for, came, and also urged, that he, the deponent, would send his daughter to Edinburgh. To which he replied, That if she was Mr Macmaster's wife, he might send her  
 D where he pleased, but if she was not, he would take her where he pleased. Further depones, That he knew that his daughter was with child, and that Mr Macmaster promised to get a nurse, and to educate the deponent's daughter. And being interrogate, If ever his daughter told him that she was with child to Mr Macmaster?  
 E Depones, She never did. And being further interrogate, depones, That he sent a signed information to the presbytery of Stranrawer, relative to the affair betwixt Mr Macmaster and his daughter, at the desire of two men from Galloway. Further depones, That in the end of harvest last, Margaret Riggs showed him a letter, which  
 F he read, in which was the following expression: "Conceal all, or I am ruined," or words to that purpose: That the letter was unsigned, and knows not by whom it was written. *Causa scientie patet, &c.*

MARGARET RIGGS, indweller in Hamilton, a witness for the  
 G prosecutors, unmarried, aged about 30 years, being solemnly sworn, &c.—Objected against her, That she cannot be received as an evidence, in respect of her having received a piece of money, or been promised a piece of money, for giving evidence in this cause; and also, she sent a letter to the complainers, or their friends, re-  
 H questing she might be adduced as a witness in the cause; so on these accounts her evidence falls to be rejected: For the proving of which a proof is craved, as to the latter alternative, by her own oath; and as to the first, by that of evidence.—Answered for the prosecutors, That, as the above Margaret Riggs objected to, has  
 already

already purged herself and deponed, the objections offered, al- A  
though there were any thing relevant in them, as there is not, they  
cannot now be heard or received, but fall, and ought to be repel-  
led.

Thereafter the said Margaret Riggs being interrogate, depones,  
That about three years ago she saw Mr Macmaster, first at Stran- B  
rawer in the house of Mr Blair the minister, on the night before  
the sacrament fast, where she went to call for him at the desire of  
Agnes Smith, who sent her to ask for marriage-lines at Mr Mac-  
master, or a double of them : That Mr Macmaster replied, That  
he would trust no person after John Murray ; but that if Agnes C  
Smith would come herself, he would give her them, or any thing  
she wanted. Depones, That she said to Mr Macmaster, You know  
well enough you got these lines : That Mr Macmaster said, I know  
not what became of these lines, but they did not signify, as they  
were wrong dated : That the deponent next asked of him, instead D  
of the marriage-lines, two letters, signed by himself as her hus-  
band, and bearing different dates, and directed, To Agnes Smith,  
which she, the deponent, would carry to her, which he also refu-  
sed. Further depones, That Mr Macmaster asked the deponent,  
If the child was like him ? to which she replied, That it was as E  
like him as if he had spit it out of his mouth. Depones, That she  
asked at Mr Macmaster, If the child was baptized ? to which he  
replied, That he might rather ask at her ; but desired her to in-  
quire at Agnes Smith ; and if it was not baptized, to get it done,  
and let him know in her first letter. Depones, That she asked F  
from Mr Macmaster forty shillings for Agnes Smith : That he re-  
plied, He had no money at that time, but would send her money :  
That about five months after, she, the deponent, got a letter with  
a twenty-shilling note, which she understood to be from Mr Mac-  
master to Agnes Smith, and delivered to her accordingly. De- F  
pones further, That in that winter in which the child died, she re-  
ceived three twenty-shilling notes more from the same hand, which  
she also delivered to Agnes Smith. And further depones, That she  
was twice in the whins near Stranrawer with Mr Macmaster and  
Agnes Smith : That at one of these times she got a bill from Mr G  
Macmaster for ten shillings, which Agnes Smith paid out of the  
money which Mr Macmaster had transmitted. Being interrogate  
for the defender, What were the contents of that declaration which

A she had signed to Mr Grant ? depones, That it was to this purpose :  
 “ I hear Mr Macmaster is going to be prosecuted before the presby-  
 tery, and desire that I may be called as an evidence.” Depones,  
 That Mr Grant gave her half a guinea : That she asked what it  
 was for ? He replied, That it is for the trouble you have got : That  
 B all this passed in her own house : That Mr Grant, in conversation with  
 her, told her, That if Mr Macmaster was laid aside, a cousin of his would  
 get the kirk : That Andrew Lyon was present at all this. Being further  
 interrogate, depones, That she never received any letters from any per-  
 son relating to her evidence in this affair. Depones further, That  
 C she was present at a conversation with Agnes Smith, Mr Bryson,  
 and some persons from Stranrawer ; but does not remember what  
 passed. *Causa scientiæ patet, &c.*

JOHN BRYSON writer in Hamilton, a witness for the defender,  
 D married, aged 30 years and upwards, being solemnly sworn,  
 &c. depones, That about a year ago, or thereby, but is not posi-  
 tive as to the precise time, a stranger-man from Galloway, and  
 thinks it was from the parish or presbytery of Stranrawer, came to  
 the deponent, and along with him was one Margaret Riggs and  
 E Agnes Smith, both in the parish of Hamilton. Depones, That that  
 stranger-man told he was one of the persons concerned in a prose-  
 cution before said parish or presbytery of Stranrawer, against one  
 Mr Macmaster the defender, for some immoralities opposing his  
 settlement in some parish within that presbytery. At this time  
 F Margaret Riggs and Agnes Smith showed to the deponent some  
 letters which were unsigned, and which they said were wrote by  
 Mr Macmaster ; and thinks they were directed to Margaret Riggs,  
 or to her care ; but the import of these letters he cannot at present  
 recollect. Depones, That that stranger-man, and the said Marga-  
 G ret Riggs and Agnes Smith, advised the deponent as to what me-  
 thod they were to take to oblige Mr Macmaster to fulfil a promise  
 of marriage, which they said he had made to said Agnes Smith ;  
 and after some long conversation on that subject, and giving them  
 some advice, the deponent heard it agreed to oppose that settle-  
 H ment of Mr Macmaster. *Causa scientiæ patet. &c.*

DAVID TORRENCE, writer in Hamilton, a witness for the defen-  
 der, married, aged 30 years and upwards, being solemnly  
 sworn, &c. Depones, That some time ago, the deponent was sent  
 for



for to the house of David Gray, vintner in Hamilton, to two stranger-men and Agnes Smith, who desired the deponent to write for them a letter to one Cowan, acquainting him, that she, Agnes Smith, was the person who had formerly wrote him anent some affairs betwixt Mr Macmaster and her, and desiring him to appear for her before some Presbytery. And being interrogate, depones, B That he does not remember that he wrote any petition for Agnes Smith, or the strangers along with her. And being further interrogate, if Margaret Riggs was present, depones? He thinks she was, but is not positive. *Causa scientiæ patet, &c.*

C  
ANDREW LYON, weaver in Hamilton, a witness for the defender, married, aged 40 years &c. Depones, That some time in winter last, he was sent for to the house of William Burns vintner in Hamilton, where he met with one Mr Clark, who was in company with one Mr Grant and John Ross shoemaker: That he was D desired by Mr Grant to conduct him to Margaret Rigg's house in Hamilton, which he accordingly did. Depones, That Mr Grant desired her to sign a paper, declaring her willingness to give evidence against Mr Macmaster so far as was consistent with truth; for if Mr Macmaster was set aside, a cousin of his, Mr Mackinzy, would get E the kirk. Further depones, That he saw Mr Grant give Margaret Riggs half a guinea: That she asked what it was for; to which he replied, That it was for nothing at all but for the trouble she had been at, but that he the deponent got nothing. Depones further, That when he returned to William Burns's, Mr Grant desired the de- F ponent to give him a line, signifying, that he had seen him give the half guinea to Margaret Riggs. *Causa scientiæ patet, &c.*

#### FIRST PROOF led before the PRESBYTERY of GLASGOW.

N. B. Before proceeding to this proof, Mr Macmaster protested, That he having appealed to the General Assembly, G from a judgment of the presbytery of Stranrawer, sustaining  
ing



- A ing the relevancy of the libel against him ; and the said presbytery having refused to admit his appeal, therefore protested, That his appearing before the presbytery of Glasgow, and making objections against the witnesses to be adduced against him, or his cross-questioning these witnesses, should not be accounted as passing from his appeal, or any homologation of the judgment appealed from.
- B

- C COMPEARED JAMES HUNTER of Frankfield, a witness for the pursuers.--Objected by the defender against this witness, That it appeared from the libel the defender was charged with falsely and maliciously aspersing the character of the witness, and Mrs Hunter his wife ; and this article of the libel being admitted to proof by the presbytery of Stranrawer, as a crime against the de-
- D fender, Mr and Mrs Hunter were improper and illegal witnesses, and their testimony cannot be received.--Answered for the prosecutors, That, as neither Mr nor Mrs Hunter are connected with, or interested in the cause, but are called upon to bear evidence on the general charge against Mr Macmaster, and can neither gain nor lose
- E by the issue of the cause ; therefore the objection ought to be repelled, and the witness received.--The Presbytery repel the objection with respect to all the articles except one, in which Mr Macmaster is charged with falsely and maliciously aspersing the character of the witness, and Mrs Hunter his wife ; and therefore admit
- F them both to be examined on the other articles.

The said James Hunter, married, aged 38 years, sworn, purged of malice and partial counsel, and examined, depones, That in the year 1764, Mr William Macmaster, the defender, was in the station of tutor to his children in his family, where he staid in whole for the space

G of one year and a half ; and that Agnes Smith, who came from Hamilton, was a servant-maid in his family the said year 1764 : That Agnes Smith left his family before Mr Macmaster left it, and, as he thinks, some months : That he never observed any immodest or indecent behaviour between the said Mr Macmaster and

H Agnes Smith, whilst they resided in his family, nor did he hear of the like between them till some months before she left his family. Depones, That then he found that it was reported in the neighbourhood where he lives, that the said Agnes was with child ; and some

some time after the said Agnes left the family, and before Mr A Macmaster left it, he heard that it was reported Mr Macmaster had been guilty of fornication with the said Agnes : That Agnes Smith, as Mrs Hunter some time after informed the deponent, was dismissed out of the family, by her, Mrs Hunter, in consequence of a suspicion which she had of the truth of said report : B That Mr Macmaster continued in the deponent's family for some months after Agnes Smith left it, till the deponent heard of the reports as to his guilt with Agnes Smith : That the deponent did then desire Mr Macmaster to get his character cleared, if he desired to continue in his family ; and that in a day or two, or soon after C that, Mr Macmaster left his family ; but does not remember if it was at a term or not ; only he remembers, that it was before the time to which Mr Macmaster had engaged to continue in his family, at least before the time for which the deponent expected he should continue in his family : That the deponent heard both the D said persons, Mr Macmaster and Agnes Smith, resided in Glasgow for some time after they left his family : That he heard also, that the said Agnes had brought forth a child in Glasgow. And being interrogate for the defender, If he heard of any immodest or indecent behaviour betwixt Mr Macmaster and Agnes Smith before E Agnes Smith left his family, depones, He heard of none. And upon the pursuer's interrogatory, Whether he heard of any indecent behaviour betwixt them, before Mr Macmaster left the family, answered *affirmative. Causa scientie patet, &c.*

F

Mrs KATHARINE HUNTER, or LESLIE, spouse to the immediate preceding witness.---The same objection made to her as to him, and the same interlocutor pronounced thereon.---Thereafter the said Mrs Katharine Hunter, or Leslie, aged 30 years or upwards, being solemnly sworn and examined, &c. depones, That G in the year 1764, Agnes Smith, daughter to Smith in the town of Hamilton, was servant in her family, and that Mr William Macmaster was in the family about the same time. Depones, That Agnes Smith left her service about the beginning of January 1765 ; and this happened upon the deponent's having heard that H she was with child, and having challenged her thereupon, and on her denial, sent her to be examined by the family surgeon, who resided in Glasgow ; from which time she never returned to the family : That, at that time, the deponent did not hear by whom she was

C

with

- A with child, nor did she then suspect any particular person as the father: That some while after, and before Mr Macmaster left the family, she, the deponent, was informed by Isobel Watt, then a servant in her family, and who had served alongst with Agnes Smith, that she, the said Isobel, suspected that Mr Macmaster was father of
- B Agnes Smith's child: That she, the deponent, had never observed any immodest or indecent carriage between Mr Macmaster and Agnes Smith, while both were in her family: That the deponent was informed Agnes Smith went to reside in Glasgow when she left her family, and brought forth a child there; but how long
- C this was after she left her family, the deponent cannot say: That, to the best of the deponent's remembrance, Mr Macmaster left her family in one or other of the months of February or March 1765; and that he did so on being told by the deponent and her husband, that, if he chose to continue in their family, he behoved to clear
- D himself of the report then current, that he was father of Agnes Smith's child: That Mr Macmaster, before he left the deponent's family, denied before the deponent and her husband that he had been guilty of fornication with Agnes Smith. *Causa scientiæ patet, &c.*

E

- ANNE VARIE, *alias* Mrs MILLER, widow, aged 40 years and upwards, witness admitted for the pursuers, sworn, &c. depones, That on the Tuesday after the fair of Glasgow, and which was the Tuesday after one Bilsland was hanged at the ordinary
- F place of execution at Glasgow, the deponent was called, in the way of her profession, as a midwife, by one Effy Maxwell, then living in the Drygate, to deliver a woman with child, then in her house: That she accordingly went and delivered that woman of a male child: That she did not know at that time who the woman was,
- G nor has seen her since: That Effy Maxwell told the deponent, the woman in child-bed was married, and that she was a Hamilton girl: That at that time she did not hear any one named as father of the child: That the wife of James Speirs weaver in Bunn's Wynd, paid her fee for said office, and told her the woman she delivered
- H had staid for some time at her house, and had given her the money: That afterwards she heard reported, that the said woman, whom she had delivered, had born that child in uncleanness; and that one Mr Macmaster, a preacher, was said to be father of said child; and that the woman had served as a kitchen-maid in the family of Mr Hunter of Frankfield, whilst the said Mr Macmaster

was



was chaplain in that family ; but she does not recollect at what A time she heard this report, further than she thinks it was several years ago. And what she has deponed is truth, &c.

JAMES SPEIRS, weaver in Glasgow, a witness for the pursuers. --Objected by the defender to this witness, That it already appears, B from the minutes of the presbytery of Stranrawer, that the witness had been tampered with by some of the pursuers, in so far as it was upon record, that Mr Hunter, one of the members of the presbytery of Stranrawer, had given evidence he had seen a letter or paper in the hands of one of the pursuers, signed by the witness ; C and the defender now further adds, and offers *instantly* to prove, that the witness, in a conversation with some persons with relation to the subject-matter of this cause, declared, that it was one David Milnae from Port-Patrick, who filled the witness dead drunk in the house of John Gourlay in Glasgow, who was since banished the D city for misdemeanour ; and there the said Milnae caused the witness sign a paper, or letter, containing all, or some of the facts alleged against the defender in the present libel, and that he had promised to swear to them when called. 2do, That he had taken a bribe, or received money, to be a witness against the defender in E this cause ; and that, in a conversation thereanent, he, the witness, said, that, for twenty shillings, he would swear for or against the defender, or words to that purpose. --To which it was answered for the pursuers, That as to the first objection, as to what evidence Mr Hunter is said to have given, as to the paper or letter being F signed by the witness objected to, as mentioned in the objection, it is not sufficient in law, *per se*, without the letter or paper itself to strike against or invalidate the evidence of the witness ; nay, in the nature of the thing, as the defender represents it, it is obvious and apparent, that that paper or letter, if any such was, it is no more, G, and can be interpreted no otherwise in the eye of the law, than as a declaration or precognition ; and therefore, the said objection falls to be repelled. And as to the second and last objection, although it were true, as it is not, that the witness offered was bribed, or promised to swear against the defender ; yet as that allegation is H purgeable by the oath of the witness, and he purging himself accordingly thereof, he ought to be received, and the objection repelled ; the more especially, as it is acknowledged by the defender, that



A that all this, if any such happened, was extorted from him, when totally insensible, and dead drunk, as the defender calls it.

The presbytery, after deliberation, remit it to the defender to prove, that the said James Speirs, now adduced as a witness, received a bribe to incline him to give evidence against the defender, B and also to prove, that he promised, at any time, for twenty shillings, or any sum of money, to swear either for or against the defender, reserving to themselves to judge of the relevancy, when the proof is taken.

The presbytery ordered their officer instantly to call before them C Gilbert Maclanachan hammerman in Glasgow, Jean Morison his spouse, Christian White inn-keeper in North-Quarter of Glasgow, and Mary Dollor her daughter, witnesses condescended upon by the defender to prove his objection.

D GILBERT MACLANACHAN, hammerman in Glasgow, married, aged 40 years, a witness for the defender, and being sworn, purged of malice and partial counsel, and examined, depones, That on the 5th day of November last, he conversed with James Speirs, concerning what had passed between him and some persons from E Port-Patrick; and that James Speirs then declared to him, the deponent, he was sorry he had signed the declaration given by him to these persons: That James Speirs did not then tell him any thing of the contents of said declaration, but said, That two men from F John Gourlay change-keeper, and had there induced him to drink to excess, when they prevailed with him to sign the said declaration: That the said James Speirs added, That he would make Mr Macmaster an upright man, and to wear his coat as well as any other man, for a note or two. Depones, That he told the deponent at the same time, that he had been examined as a witness G against Mr Macmaster before the Barony session, and had then witnessed nothing against him, and that he could not witness any thing against him: That the said James Speirs affirmed farther, That he could equivocate when examined on oath; upon which the H deponent told him, If that was the case, and that he equivocate for a note or two, he was unworthy to be a witness for or against any man. Depones, That James Speirs informed him at the same time, that he had been with Mr Finlay, his parish-minister, on an occasion of getting a child baptized; and that Mr Finlay desired to be informed

informed by him, as to the testimony he had given before the Ba- A  
 rony session in Mr Macmaster's affair; and that he had answered  
 to Mr Finlay, That he had witnessed nothing against Mr Mac-  
 master. Being interrogate, If, from the said conversation with  
 James Speirs, he thought, that it was his design to make a job of  
 his evidence in Mr Macmaster's process? depones, That he could B  
 not tell. Depones, That, at an after time, about six weeks, as he  
 thinks, the said James Speirs was in his house and in his company,  
 with one Simple a wright, and another man whose name he  
 knows not; and that the deponent told the said James Speirs be-  
 fore these men, that he, the deponent, would not take him as a C  
 witness for or against any man; and that, in the course of this  
 conversation, James Speirs sometimes acknowledged, and some-  
 times again denied his having an acquaintance with Mr Mac-  
 master. Depones, That at the communing with the deponent  
 first mentioned, the deponent's wife was present, and another man, D  
 whom Speirs had brought into her house; and that at the second  
 communing, the deponent asked James Speirs, what was become of  
 the man who was present along with him at their first commun-  
 ing? and that he, the said James answered, He was enlisted;—and  
 he the deponent might go and seek him, if he pleased. Depones E  
 farther, upon the pursuers interrogatory, That he was acquainted  
 well with Mr Macmaster about fourteen years ago, but has not  
 seen him these six or seven years, till within these three or four  
 months; and has not seen him above three times within that space.  
 Depones, That the deponent keeps a public house; that, so far as F  
 the deponent observed, James Speirs was not drunk at either of the  
 communings above mentioned: That the reason why he asked  
 James Speirs, at the second communing, What was become of the  
 man who was along with him at the first? was, that he thought that  
 man might be a witness alongst with himself, the deponent, as to G  
 James Speirs's acknowledgement above mentioned, that he could  
 equivocate; and that it was for the like reason the defender had  
 brought his wife into the company. And what he has deponed is  
 truth, &c. And further, depones, That he saw John Gourlay  
 put out of the town of Glasgow, for keeping a house of bad H  
 fame; and this is also truth, &c.

CHRISTIAN WHITE, spouse to John Doller, change-keeper in  
 Glasgow, aged 40 years and upwards, a witness for the defender,  
 D who

A being sworn, purged of partial counsel, and examined, depones, That she has some acquaintance with James Speirs: That he, his wife, and Effey Maxwell his mother, were in the deponent's house, near to Candlemas last, she cannot remember whether before or after: That there was another man along with them at the  
 B same time, but the deponent knew not who he was: That the deponent could not attend to the conversation that then passed, as she was engaged in her family affairs; but she saw the man, upon being called into their company by one of them, deliver a twenty shilling note to James Speirs, and five shillings to Effey Maxwell,  
 C and some money, half a guinea, she supposes, but is not sure, to James Speirs's wife: That she did not know for what purpose the money was given to any of these persons, nor was Mr Macmaster's name mentioned, so far as she remembers. Depones, That she heard Effey Maxwell complaining, that she had got too little,  
 D giving as the reason, that she could be as good a witness as either of them; and that this happened before she left the deponent's house. Depones, That James Speirs did at first refuse to take the money. Depones, That when her husband was called in to the company, she prevented him from going into it, in regard she was afraid the  
 E affair might afterwards become troublesome. And what she has deponed is truth, &c.

JEAN MURISON, spouse of Gilbert Maclanachan, a former witness, aged 30 years, a witness for the defender, being  
 F sworn, purged of malice and partial counsel, and examined, depones, That she has some acquaintance with James Speirs, but none with his wife, or his mother Effey Maxwell. Depones, That about Martinmas last, as the deponent thinks, James Speirs came to her house along with a man she did not then nor does yet know:  
 G That she heard James Speirs in that company say, he could make the minister of Port Patrick, or keep him out, for a note or two; by which the deponent understood, that he meant twenty shilling bank-notes. Depones, That her husband, a former deponent, said to him, I take you to be no man at all who would equivocate  
 H for a note or two. Depones, That her husband took her, and the other man present, witnesses, that James Speirs would equivocate upon oath for a note or two; and having asked the man's name who was present, neither he nor James Speirs would tell it. Depones, That at this time James Speirs told them, that some Port  
 Patrick



Patrick people had taken him into the house of John Gourlay, and A made him sign a paper relative to the affair between Mr Macmaster and Agnes Smith, and that he wished he had not put pen to paper, as he did not know what he was doing. Depones, That, at another time, the said James Speirs came into her house; and she having asked, What news? he answered, No news, but that he had B got his winter's beef by it; by which the deponent says, she understood, that he had got a note or two in Mr Macmaster's cause, though Mr Macmaster was not mentioned: That, at another time, and in spring last, James Speirs happening to be in her house when there was none present but themselves two, he said to her, that he C had wrote for some pills, and expected the phyfic; and that the deponent understood that he had wrote for more money. Depones, That Mr Burns, in the head of the New Vennel, told her, that James Spiers had gone to Port Patrick lately. Depones, That she keeps a public house. Depones, upon the pursuers interrogatory, D That she was acquainted with Mr Macmaster about twelve years ago, but has not seen him for these six years last, till within these few days past, when she saw him on the street. Depones, That at all the times James Speirs was in the deponent's house, he was not drunk; and if he was any ways touched with liquor, yet he was E sensible enough. Depones, That at the first meeting, the man who was alongst with him wanted to borrow some money from him: That, in taking out money to pay the reckoning, and taking the halfpence from the silver, in putting the silver up, he slipped three shillings of it by his pocket, and it fell into the arm-chair he was F sitting on, and lay there till next morning, till he came back for it. Depones, That her husband was present at three meetings in her house with James Speirs within three weeks. And what she has deponed is truth, &c.

MARY DOLLER, daughter to John Doller change-keeper in G Glasgow, unmarried, aged 16 years, a witness admitted for the defender, being sworn, purged of malice and partial counsel, depones, That she has a general knowledge of James Speirs and his wife, and Effey Maxwell his mother: That she saw them three times, and a man alongst with them, in her father's house about Candlemas H last. Depones, That she heard no mention made by them of Mr Macmaster, or the minister of Port Patrick. Depones, That she saw a note, and half a guinea lying above it, on the table; and she heard



A heard the man, she did not know, say, That the note was for James Speirs, the half-guinea for his wife, and she saw Effey Maxwell have a crown in silver in her hand; and this money viz. the note and half-guinea, she afterwards saw in the custody of James Speirs: That she heard Effey Maxwell afterwards say, " she had got over B " little, but she would be upsides with him after this yet." Depones, The man who gave away the money called her in to see him give it away: And depones, That he was habited like a gentleman. And what she has deponed is truth, &c.

The defenders agreed to adduce no farther evidence with regard C to their objections against James Speirs, excepting those already adduced.

N. B. Parties were heard, and the depositions of the witnesses adduced for proving the objections against James Speirs, D with the remit of the presbytery, allowing such a proof, were read over; and after long reasoning, the presbytery, by a great majority, found, that the defender had failed in proving both, or either of the things, remitted by them to be proved; and therefore, that James Speirs ought to be examined as a witness in this cause. E

Against which judgment, the defender, Mr Macmaster, protested, and appealed to the synod of Galloway; against which appeal, the procurator for the pursuers protests, that the same was totally F irrelevant, incompetent, and absurd, and contrary to all laws, and the practice of every court in causes of this kind.

Thereafter, the said JAMES SPEIRS weaver in Glasgow, married, aged 33 years, being solemnly sworn, and purged of malice and partial counsel; the defender's procurators required the moderator to interrogate the witness, If or not about Candlemas last, he G received in the house of Christian Whyte, in presence of her and her daughter, former witnesses in this cause, a twenty shilling bank-note, or some other sum of money at that or any other time, from any other person or persons, to bear witness either for or H against any of the parties in this cause?—The procurator for the pursuers contends, That the question cannot be put, because he, the deponent, has already led four evidences to establish that point, but has failed therein; and therefore, the question is quite incompetent and illegal.—The presbytery having reasoned upon the propriety

priety of putting this question, and being of different opinions, A  
a vote was stated, Put this question or not; and, the vote being put,  
carried by a majority, not to put this question, in regard that the  
defender had undertaken otherwise to prove the thing questioned,  
and had failed.—Against which judgment the defender's procura-  
tors protested, and appealed to the presbytery of Stranrawer; and for B  
reasons of appeal gave, that, in regard this presbytery had found  
the defender had failed in his proof of the objections against the  
witness, that therefore it was the only reason for their requiring it  
to be put to the witness; and also, that the question behoved to be  
put in the initials of the oath, as it would not be found compe- C  
tent to put it after the witness had been asked the general question,  
Whether he had received a bribe, or the promise of a good deed or  
reward, to bear witness in the cause?—The procurators for the pur-  
suers contend, That as the judgment protested against and appeal-  
ed from, is not in the least eluded by such protest and appeal, the D  
more especially as the whole cause is to come before and be judged  
by the presbytery of Stranrawer, appealed to, the presbytery ought  
therefore to proceed in terms of the judgment appealed from. And  
the defender protested *contra*, as above. And the witness being ask-  
ed particularly, Whether he had received from any person, any E  
good deed or promise of good deed, with a design to engage him  
to swear for or against either of the parties? The deponent an-  
swered and deponed, He never had received any money as a bribe  
for deponing in this cause; nor had he ever received any good  
deed, or promise of it, for such a purpose. The said James Speirs F  
being interrogate, If he is acquainted with Mr Macmaster, the de-  
fender in this cause? depones, That he is. Depones, That  
he heard and understood, that Mr Macmaster was chaplain to Mr  
Hunter of Frankfield in the year 1764, and that he was afterwards  
told by the said Mr Macmaster and Agnes Smith, that she the said G  
Agnes was there a servant in Mr Hunter's family: That, in  
the beginning of March 1765, the said Agnes Smith came to re-  
side in the deponent's family: That the said Mr Macmaster came  
to the deponent's house several times during the said Agnes Smith's  
residence there, and did so for the first time, soon after she entered H  
into his family, Depones, That the said Agnes, at her entering into  
his family told, that she had married a young man privately, of a  
station some what above hers, without the knowledge of his pa-  
rents, and desired that the deponent would give her lodging in his  
E house

A house till she found another proper residence for herself: That at the first time Mr Macmaster came to his house to visit Agnes Smith, the deponent did not know who he was, but apprehended he was the young man with whom Agnes affirmed that she was married privately: That the deponent being working on his loom, Mr Mac-

B master (for he has since well understood that he was the man) came to the room where he was working, and no other present, and the deponent asked him, Whether he was privately married to Agnes Smith? the deponent does not remember whether he answered so precisely at first, but he did acknowledge soon after-

C wards that he was married to her: That both the deponent and Mr Macmaster soon went into the room where the deponent's wife and family, with Agnes Smith, were together; and Mr Macmaster then called for half a mutchkin of spirits and some ale, which they drank together; and the deponent then put the question he

D had before put privately, to wit, Whether he was married to Agnes Smith, as she affirmed? To which Mr Macmaster answered, That he was married to her; and added, That he desired the deponent would treat her with kindness while she continued to lodge with him: That soon after Mr Macmaster

E and the said Agnes went out together, and at their return, a short time after, Agnes Smith asked the deponent, If she and the young man that had gone out and returned with her, could be accommodated in his house that night, to bed together as married persons? To which the deponent answered, They could; and accord-

F ingly a bed was assigned them in his house, in which they slept together that night. Depones, That they continued in bed till eight or nine o'clock next morning, when Mr Macmaster, having risen and dressed himself, went away, and did not, to the deponent's knowledge, return to his house till night, when he came back, and slept

G with Agnes Smith, as he had done the night before: That some while after, the deponent cannot recollect how long, Mr Macmaster came again to the deponent's house, and slept with the said Agnes Smith a third night: That all this was before Agnes Smith's being delivered of the child she brought forth afterwards, nor did the

H deponent know at these times, that she was with child: That in the month of July following, the deponent understanding, not only that she was with child, but near the time of delivery, judging it inconvenient to accommodate her in his house while she was in childbed, directed her to the house of Effey Maxwell his mother,



mother, where she was delivered of a male child about eight days after: That the deponent had access to know, and was informed certainly, that Agnes Smith was brought to bed at night; and early on the second morning afterwards, Mr Macmaster and the deponent accompanied her from that house to about Balfour's land, from which place Mr Macmaster went away, giving this reason for it, that he had seen a person who he suspected knew him: That the deponent went from thence with Agnes Smith to his house, where she continued some hours, till about eight or nine of the clock in the morning; and that then she went from his house to a house in the Stockwell, where a sister of the deponent's wife lodged, and the deponent saw Agnes Smith in that house some days afterwards; and that Agnes Smith has since told him, that she went from that house with Mr Macmaster to Galloway. Depones, That the reason why the said Agnes left the house of Effey Maxwell was, that one of the elders in the North Quarter parish had appeared much dissatisfied at the said Effey for harbouring a woman that had born a child, and could not give a satisfying account of herself. Depones, That at first, and for some part of the time that Mr Macmaster was in use to visit Agnes at the deponent's house, he went in his family under the name of William Muir, which name Agnes Smith bid them to give him, till he the deponent was informed by neighbours, that his true name was William Macmaster. Depones, That during the time Agnes Smith was in his house, Mr Macmaster visited her often. Depones, That Effey Maxwell, at the time when Agnes Smith lodged with her, had her house in the Drygate-street of Glasgow; and that the land, above stiled Balfour's land, is a little below the wynd head. Depones, That when Agnes Smith returned from Galloway, as she said, she told the deponent, that she had been there, and that she had resided for some time near the house of Mr Macmaster's parents; and also, that while there, she had sometimes been privately in the company of Mr Macmaster the defender, till it was observed and found fault with by the presbytery or session. *Causa scientie patet, &c.*

JEAN NIVEN, wife to the preceding witness, James Speirs, a witness for the pursuers.—The procurators for the defender objected against her being received, because it was offered to be proven *instante*, that she, or her husband in her presence, or for her behoof,

or

A or for their joint interest, had received money to bear witness in this cause, or at least to bear witness for or against the defender in this cause, in the house of Christian Whyte, a former witness in this cause, about Candlemas last; at least money was received and given in manner foresaid, in name of trouble the said Jean Niven and her husband had been put to, or would be put to, in this matter; at least that at some other time and place, within these twelve months last, she, or her said husband for her, had received money, or some good deed or reward, or the promise thereof, from some person other than the defender, to bear witness against or for the defender, in relation to the affair betwixt Agnes Smith and him; at least had been solicited or tampered with to bear witness against the defender, and had signed or put her mark, or caused her husband sign and deliver, a declaration or letter *non coram iudice*, that she knew or had heard Mr Macmaster confess or acknowledge, that he was married to Agnes Smith, and, as her husband, had slept in her the said Jean Niven's house, and had promised or engaged to swear or depone to the purport, meaning, and effect of the said letter or declaration, and condescended upon witnesses to prove the said allegations, viz. for proving her receiving of money to the effect, and in the manner foresaid, or her husband before her, acknowledging money had been given to and received by her, to the foresaid purpose, condescended upon James Donaldson weaver at the Deanfide-well of Glasgow, and his wife Christian Whyte, a former witness in this cause, and Marry Doller her daughter; and for proving the other parts of the condescendence, refer the same to the witness's oath.—To which it was answered for the pursuers, That there is no sort of relevancy or competency in the objections offered against Jean Niven, provided she purge herself of malice, &c. in common form; because the defender has already been allowed to adduce no less than four witnesses, as well to instruct the allegations he now makes against this witness, as those which are to the same meaning and import against James Speirs her husband, and totally failed therein; and thereon the said James Speirs was received, examined, and deposed *ut in scriptis*. 2do, As the defender has not condescended upon any particular time or place where money is said to have been given to the witness offered, nor the persons named by whom such money was said to be given, other than in the house of Christian Whyte, a former witness; and that she and her daughter, Mary Doller, had been already fully examined on that head,

head, and the judgment of the presbytery pronounced thereon ; A  
 therefore the objection ought to be repelled. As to the letter or  
 declaration said to be signed by the witness offered, to the purport,  
 meaning, and effect of what she is now to be examined upon, she  
 was in *bona fide* to sign such letter or declaration, if she pleased, be-  
 fore citation in the cause, as the same is of no other meaning, and B  
 can have no other effect, and be interpreted no otherwise than a  
 precognition, which ought, before her being obliged to depone, be an-  
 nulled. As to James Donaldson and his wife, their being received  
 as evidences in support of the allegations mentioned in the de-  
 fender's objection, although they were relevant, as they are not, C  
 being in list, and served upon the pursuers, and the defender  
 having agreed to examine no further witnesses for establishing his  
 allegations against Spiers, the witness offered, and Effey Maxwell,  
 other than Maclanachan, his wife, Christian Whyte and her daughter,  
 who have been all examined, and their evidence judged of by the D  
 presbytery, and which evidence was to be repeated by the defen-  
 der against the witness received ; therefore the defender is barred  
*per pactiorem*, from aducing any other evidence on that head : And  
 therefore, and for other reasons that naturally rise in *hoc statu*, the  
 presbytery, it is hoped, will have no difficulty to repel the objections E  
 offered, and receive the witness.—Replied, The objections are rele-  
 vant, and the defender craves they may be admitted to his proof.

The presbytery having considered the objections and answers,  
 remit it to the defender to prove *instante* by witnesses, That Jean  
 Niven received a bribe, or promise of a bribe, to induce her to F  
 swear for or against the defender in this cause, reserving to the  
 presbytery to judge of the effect such a proof will have when ad-  
 duced.—Against this interlocutor the defender protested, and ap-  
 pealed to the Reverend Presbytery of Stranrawer ; and that his rea-  
 son of appeal was, That the objections as stated were relevant to G  
 set aside and disqualify the witness from being evidence in this  
 cause ; and for that reason, and others to be advanced at the bar  
 of the Reverend Presbytery of Stranrawer, he protested and appeal-  
 ed as aforesaid.—Against which appeal the pursuers protest, and  
 crave, That as the Presbytery are in *bona fide* to proceed, they H  
 would do so accordingly.—The defender further protested, That if  
 this Reverend Presbytery, or the Presbytery of Stranrawer, should  
 judge that this Presbytery was the same thing as they the Presby-  
 tery of Stranrawer themselves, in that event the defender protests  
 F against



A against the aforesaid judgment, and appeals to the synod of Gal-  
loway. The procurators for the defender refuse to examine the  
witnesses to be adduced by them upon what the presbytery has re-  
mitted to their probation, unless they be examined upon the other  
allegations in their objections, because the Reverend Presbytery  
B had confined them to the witness receiving a bribe personally,  
and not in terms of the objections.—The Presbytery think proper,  
for the clearer explication of their meaning, to record it here, that  
the greatest part of the allegations in the objections against the wit-  
ness now adduced, appeared to them to be altogether irrelevant and  
C frivolous; and that it appeared to them, from the minutes of the  
Reverend Presbytery of Stranrawer, that they had not considered  
what was set forth in Mr Hunter's declaration before them, with  
respect to a paper or declaration signed by James Speirs, with a post-  
script, bearing, that his wife said the same, as being of any rele-  
D vancy, or a hindrance to the examination of either James Spiers  
or his wife: Further, that it appeared to this presbytery altogether  
incompetent to admit it now } to be proved by the defender, that  
James Speirs had taken money for his own or wife's behoof, to  
swear in this cause, after the defender had done his utmost to prove  
E by witnesses that allegation against James Speirs, and failed in the  
attempt; and after James Speirs, as will appear *ex scriptis*, had  
been purged in common form before giving his testimony: And  
further, that the presbytery, in their remit to the defender, a-  
gainst which they have now appealed, had allowed them, in the  
F most general and unlimited terms, to prove *instante* by witnesses,  
that Jean Niven had received a bribe, or promise of a bribe, to in-  
duce her to swear for or against the defender in this cause. The  
Presbytery therefore, notwithstanding these, and objections above  
mentioned, proceeded to the examination of Jean Niven; against  
G which the defender protests for the reasons foresaid.

The said Jean Niven, aged 34 years, being sworn, &c. depones, That  
she is acquainted with the defender Mr William Macmaster; and being  
desired to point him out if he was present in presbytery, she point-  
ed out the defender in this cause as him. Depones, She has known  
H the said Mr Macmaster for upwards of six years past; also, that she  
knows Agnes Smith mentioned in the former depositions. De-  
pones, That Agnes Smith came to reside in her family in the  
month of March 1765: That in two or three days after she came  
to the deponent's house, the defender Mr Macmaster visited her  
there;

there: That when she came first to the deponent's house, she told A them that she was married privately to a young man somewhat above her station, and without the knowledge of his parents: That soon after Mr Macmaster came to the deponent's house, as said is, he went into the room, where her husband was alone at his work, and staid for some time with him; that then both her husband B and Mr Macmaster returned to the room where she, her family, and Agnes Smith were; and at that time, both Mr Macmaster and Agnes Smith acknowledged their being married privately together, and designed to take up room together against Whitsunday then next: That at that time either the said Mr Macmaster or Agnes C Smith called for half a mutchkin of spirits, and some ale, which was drunk by the company. Being interrogatè, If at that time, in her hearing, Mr Macmaster desired her husband or her, or both, to treat Agnes Smith in a kind manner while she continued to lodge with them? depones, That she does not remember that he spoke D words to that purpose: That soon after this Mr Macmaster and Agnes Smith went out for a small space of time together, and afterwards they returned to the deponent's house, but is not positive if they came in both together: Upon Agnes returning, she asked the deponent and her husband, If she and the young man could E get a bed that night to sleep together as married persons? and the deponent and her husband answered, They would have such a bed as they could afford: That accordingly a bed was assigned to them in the deponent's house, in which, as she believes, they slept together that night; at least the deponent observed them going both in- F to the room, and next morning found them there in bed together: That it was about 8 o'clock next morning or they arose: That some time after Mr Macmaster went away: That he returned again at night, and slept that night with Agnes Smith, as on the preceding one. Depones, That some while after Mr Macmaster came to the G deponent's house at night, and slept then also with Agnes Smith a third night; and all this happened before Agnes Smith was brought to bed: That in July after, Agnes Smith was brought to bed of a male child, in the house of Effey Maxwell, mother to the deponent's husband: That Agnes Smith removed from the depo- H nent's house to the house of the said Effey Maxwell some days before her delivery, and that the reason was, that it would be inconvenient to and incommode them to have her with them during her delivery: That she staid in the house of the said Effey Maxwell after her delivery,

A livery, about two days. Depones, That early on the second morning after Agnes Smith was delivered, her husband went from her house, with an intention to bring the said Agnes Smith from the house of Effey Maxwell; and accordingly he returned with her in a short time: That she was told Mr Macmaster had been alongst with  
 B them part of the way, and had come to the wynd-head, but went off there, as she suspected he had seen a man who was acquainted with him; and this she was told by her husband: That some hours afterwards she went along with Agnes Smith to the house of Nelly Niven in the Stockwell, a sister of the deponent's, and carried Agnes Smith's child along with her; and thinks that the said Agnes  
 C staid in that house for about eight days; and, as the deponent came afterwards to be informed by Agnes Smith, she, the said Agnes, did then go to Galloway in company with Mr Macmaster: That Mr Macmaster, when he first came to the deponent's house to Agnes  
 D Smith, passed under another name, and which was William Muir, as she thinks; and that the said Mr Macmaster visited Agnes Smith several times in the deponent's house, besides those already mentioned. Being interrogate, Whether or not Mr Macmaster did at any time impress money in her hands, or those of her husband with her knowledge, for the use of Agnes Smith? depones,  
 E He did not; and that she received the payment of the room-rent from Agnes Smith herself; and she gave the deponent a crown to be given to Mrs Millar, midwife, a former witness, for her trouble in delivering her. Depones, That the said Agnes Smith acknowledged to the deponent, That Mr Macmaster gave her money from  
 F time to time. Depones, That the said Agnes Smith told the deponent, That she had marriage-lines, but that Mr Macmaster had wiled them from her; but she the deponent never saw any; and that Agnes Smith told her this while she staid in the deponent's  
 G house. Depones, That both Mr Macmaster and Agnes Smith told the deponent, whilst she, the said Agnes, staid in the deponent's house, That Mr Macmaster had been chaplain to Mr Hunter of Frankfield in the year 1764; and that she, the said Agnes, had been then a servant in that family. Depones, That the reason why  
 H she knows Agnes Smith was delivered of a male child in the house of Effey Maxwell was, That she, the deponent, was present at the delivery: And what she has deponed is truth, as she shall answer to God. And being further examined, depones, That Mr Macmaster was in Effey Maxwell's house along with the deponent some part of  
 that



that night on which Agnes Smith was brought to bed, and did eat **A**  
and drink with the company on that occasion. Depones, That she  
thinks her husband took the child from the bed, and delivered it  
into the arms of the said Mr Macmaster. And this is also truth,  
&c.

**B**  
EFFEY MAXWELL, residenter in Drygate, Glasgow, a witness cal-  
led for the pursuers.--Objected by the defender against this witness,  
That it is offered to be proven *instante* she had received money from  
some other person than the defender, to bear witness against him in  
relation to the affair, as now alledged, betwixt Agnes Smith and **C**  
him; and that she had made no secret of her so receiving the mo-  
ney for the purpose aforesaid, but had openly declared the same  
to several persons, of her, her son, and his wife receiving money  
in the house of Christian White, a former witness, sometime about  
Candlemas last: And further, That she had been solicited or tam- **D**  
pered with to bear witness against the defender, and had signed or  
put her mark, or caused James Speirs, a former witness, her son, put  
her mark to an extrajudicial declaration or letter; and delivered the  
same, or at least was present when the said James Speirs, her son  
and his wife, did sign and deliver a letter or declaration *non coram* **E**  
*judice*, to the import that the defender had acknowledged to her, or  
that she had heard him acknowledge to others, that he was married  
to Agnes Smith, and had slept with her as her husband, in the  
house of the said James Speirs her son, and heard the said declara-  
tion read, and adhered thereto; and had promised or engaged to **F**  
swear or depone to the purport, meaning, or effect of the said de-  
claration; and condescended on the following witnesses for proving  
the foresaid objections, *viz.* James Donaldson weaver in Glasgow,  
Janet Bruce, and Janet Gillespie, all indwellers in Glasgow, Christian  
White and Mary Doller former witnesses in this cause, and **G**

Miller relict or spouse of Robert Winnen weaver in Glas-  
gow, and Anne Jack indweller in Glasgow.

The defender further objected against receiving the witness, for  
the following reason, *viz.* That at the last meeting of the presby-  
tery, the witness Effey Maxwell came into the court, and made of- **H**  
fer of herself to be a witness in the cause, in presence of the whole  
members of the reverend presbytery then present, and others then  
assembled in the presbytery-house, and of which members of the  
reverend presbytery of Glasgow there are at the time of making

**G**

this

A this objection present, the Reverend Mr John Corse moderator, Dr Finlay, one of the ministers of the city of Glasgow, and Mr Anderson minister of the Gorbals, who are now called upon as witnesses, for proving of the above objection; it being a known principle in law, and has also a sufficient foundation in equity, B that any person offering him or herself to be a witness in a cause, or promising to bear witness in it, are separately sufficient objections to set aside such witness, without any other evidence. The pursuers repeat the answers made to the objection against James Speirs's wife, with the judgment of the presbytery thereon. And C as to the second objection, answered, That there is no relevancy in the objection, for the witness had received a formal citation to appear as a witness in this process, and had accordingly attended for two or three days, in consequence of it; and a witness declaring that she would rather wish to be examined at present, than be obliged to attend any longer, can never come under the definition of ultroneous.---Replied, The objection was not made against the witness as an ultroneous witness, but upon her having come into the court, and offering herself to bear witness, or words to that purpose; for it was one thing to behave in that manner, and quite E another thing to come without a citation, which is properly an ultroneous witness.—Duplied, The presbytery saw in what manner the witness behaved, and they can very properly judge if there is any relevancy in the objection.

The presbytery think proper to have it observed, as to the second F of the defender's objections against this witness, That on Friday last, a little before the meeting of presbytery was concluded, this witness having attended at all the meetings from the commencement of this cause before the presbytery, and being, it would seem, impatient under the prospect of attending any after-diets, came in- G to court of her own accord, and demanded that she might be examined at that time, giving, as a reason for it, that she could not, or would not attend at any after-diet. The presbytery are clearly of opinion, that however this may be considered as an indiscretion in the behaviour of a witness, it can justly have no relevancy to set H her aside from being a witness. As to the first objection, the presbytery having considered it, and the answers made by the pursuers procurator, do remit it to the defender, to prove *instantly*, that the witness Effey Maxwell received money from any person, with design to incline her to swear against Mr Macmaster; and that she told

told to different persons, that she had received money for that purpose, or either of these things; the presbytery reserving to themselves, to judge of the relevancy of what shall be found in the proof when taken. A

The following witnesses were adduced by the defender, to prove what is remitted to him to prove; and depone as follows: viz. B

JANET BRUCE, spouse to James Stewart gardener in Glasgow, aged 40 years and upwards, witness admitted for the defender, C sworn, &c. depones, That she is acquainted with Effey Maxwell. Depones, That since Candlemas last she heard the said Effey Maxwell say, in the house of Mr Winnens in Glasgow, that she had received a crown from some person, she could not tell whom, to be a witness against Mr Macmaster in this cause; and this D Effey Maxwell has told her at different times and places, more than thrice. Depones, That the first time Effey Maxwell informed the deponent of her having received said money, she told her she had received it the night immediately preceding, in the house of Christian White, a former witness. Depones, That on that night the deponent happened to be in the house of the E said Christian White, and was then informed by her daughter, Mary Doller, a former witness, that Effey Maxwell had received a crown that night in their house; but the deponent cannot say, that Mary Doller informed her the money was given to make the said Effey swear against Mr Macmaster, or that Mr Macmaster or his F cause was so much as at all mentioned by the said Mary; but next morning Effey Maxwell herself informed the deponent, not only that she had received the said money the night before, but that it was given her to speak against Mr Macmaster for the woman. Depones, That on the said night, and in the said house of G Christian White, the deponent was likewise informed by Mary Doller, that James Speirs and his wife, witnesses before examined, had received money at that time, as well as Effey Maxwell, from a stranger; and that James Speirs had, for his share, received a twenty-shilling note; and that half a guinea had been changed, H and a crown of it given to Effey, and the rest to James Speirs's wife: That the said Mary also informed her, that the said James Speirs, his wife, and Effey Maxwell, with a stranger gentleman, were in



A in the next room at the time the deponent was in Christian White's house on the said night. And being interrogate for the pursuers, depones, *Nihil novit*. And being interrogate by the presbytery, Whether or not, when Effey Maxwell told her she had got a crown from that stranger to make her speak against Mr Mac-

B master, she, the deponent, understood, that by speaking against him, Effey Maxwell meant swearing against him in judgment? answered, That she thought Effey Maxwell meant so, according to her weak judgment. Depones, That, to the best of her remembrance, Effey Maxwell did not say to her, that the stranger who

C gave the crown to her, had said when he gave it, that it was given to make her speak against Mr Macmaster, or for Agnes Smith. And what she has deponed is truth, &c.

JANET GILLESPIE, relict of John Jack weaver in Glasgow,

D widow, aged 40 years and upwards, witness admitted for the defender, sworn, &c. depones, That she knows and has been acquainted with Effey Maxwell for a good time bypast: Depones, That a considerable time ago, but she does not remember particularly how long, only within twelve months past, while Effey Max-

E well and she were washing clothes together at a burn, the said Effey told her, that the night before that, she had received a crown, from whom she did not know, nor did she know for what purpose it was given her; but she believes her son James Speirs might know about it; and that she had received this money on the night

F immediately preceding, in the house of Christian White a former witness; and that Janet Bruce, last examined, was present when Effey Maxwell told what is above in the deponent's hearing: That on Saturday last, the 28th current, Effey Maxwell told the deponent, in the house of Robert Winnen weaver in Glasgow, that she had

G received the crown aforesaid in favours of the woman, as she supposed, from a merchant in Glasgow, whom she did not know, but supposed her son might know him. And what she has deponed is truth, &c.

H The defender passed from examining any other witnesses on the point remitted to their probation relative to the above objections; and craved that the presbytery will give judgment on the proof as it stands, for setting aside Effey Maxwell from being a witness in this cause, and repeated the depositions of Christian

stian White and Mary Doller in support of the objections made A  
 against Effey Maxwell ; and contended, that from these depo-  
 sitions, and the other two taken this day, it was evident to  
 demonstration, that the money received by Effey Maxwell was  
 a bribe. The depositions of Christian White and her daughter  
 Mary Doller, together with the depositions of the other two B  
 witnesses, being read over to the presbytery, the presbytery,  
 after reasoning on this affair of the objections against Effey  
 Maxwell's evidence, and after considering deliberately the  
 whole proof adduced by the defender, are unanimously of o-  
 pinion, That he has not proved any sufficient ground for set- C  
 ting aside this witness; and therefore agree to proceed to take  
 her deposition. Against which judgment of the reverend pres-  
 bytery of Glasgow, the defender Mr Macmaster protested,  
 and appealed to the Reverend Presbytery of Stranrawer, and  
 if they shall deem or count this interlocutor of the presby- D  
 tery of Glasgow, to be theirs (the presbyteries of Stranrawer's)  
 own act and deed. The defender, Mr Macmaster, in that  
 event, appeals to the very Reverend the Synod of Galloway, at  
 their next meeting, and for reasons of appeal, repeats the  
 depositions of Christian Whyte, Mary Doller, Janet Bruce, E  
 and Janet Gillespie ; reserving liberty to add such other rea-  
 sons as shall be thought convenient when this appeal comes  
 to be heard before either of the two courts before mentioned,  
 who shall take the same under their cognizance. The pursuers  
 protests that notwithstanding what the defender has advanced, F  
 the presbytery are in *bona fide* to proceed to the examination of  
 the witness, and craves they may do so accordingly. Defen-  
 der protests *de contra*.

The said Effey Maxwell, widow, aged 50 years, and upwards, G  
 witness admitted, as said is, sworn, &c. depones, That she knows  
 Mr Macmaster, and has done so for the space of six years, prece-  
 ding last July fair in Glasgow. Depones, That she is also acquainted  
 with Agnes Smith, who she has heard served sometime in Mr  
 Hunter of Frankfield's family. Depones, That the said Agnes H  
 Smith resided in the house of James Speirs the deponent's son for  
 some months preceding July, already mentioned by her. De-  
 ponos, That she never heard the said Agnes Smith say, that she  
 was married to the said Mr Macmaster. Depones, That she has

A seen Mr Macmaster sometime in her son's house with Agnes Smith, while she staid there, but does not recollect any part of their conversation together in her hearing. Depones, That in the July aforesaid, the said Agnes Smith was delivered of a male child in the deponent's house. Depones, That on the day before Agnes Smith's  
B said delivery, the deponent knew she, Agnes, had no money in the morning: That the deponent's son, James Speirs, went and brought Mr Macmaster to Agnes, at her own desire: That, on his coming, Mr Macmaster and she went by themselves for some time; and afterwards the deponent found, that Agnes Smith had then some  
C money: That the deponent did not know for what reason Agnes Smith had employed her son to bring Mr Macmaster to her at that time. Depones, That on the night in which Agnes was delivered, the defender Mr Macmaster came to the deponent's house, and both eat and drank there, and the child was delivered into his  
D arms. Depones, That Mr Macmaster returned to the deponent's house on the evening of the following day, and conversed sometime with Agnes Smith, and then went away: That the deponent went that night to bed about her ordinary time, and found, when she rose next morning, that Agnes Smith had left the house, the  
E deponent knew not then at what time precisely she had done so, only being awake, she heard her son's voice in the house, and that he asked the deponent, If she was then awake? and her son afterwards told her, that he had accompanied Agnes Smith out of the deponent's house, but does not remember, that her son told her, Mr Mac-  
F master was in company: That the deponent, at Agnes Smith's desire, went for the midwife, before Agnes Smith's delivery, to deliver her. Depones, That she does not remember whether she told Mrs Miller the midwife or not, that Agnes Smith was a married woman, at the time she went to bring her to Agnes's delivery; nor  
G that Mr Miller asked, Whether she was married or single? Depones, upon the interrogatory of the presbytery, That near about Candlemas last, the deponent being in the house of Christian Whyte, and her son James Speirs and his wife, being also present, a man who was altogether a stranger to the deponent, but who (her son, she  
H thinks, afterwards informed her), was a merchant in Glasgow, gave in her presence, to her son, a twenty shillings note, and advanced further the sum of ten shillings, which was instantly divided between her and her daughter-in-law, a crown to each, but without mentioning any reason for which he gave the money, nor did



did the deponent at the time understand any reason, further than A that in general it might have some relation to Mr Macmaster, though whether for or against him, the deponent cannot say. Being interrogate further for the presbytery, What was her meaning, when, according to some of the depositions formerly taken in this matter, she said at receiving the crown, that she had received too little, and B gave as a reason for this, that she could be as good a witness as any of them? Answered, her meaning was, That she had as good access to know the truth in the affair of Mr Macmaster's and Agnes Smith, as even her son, and was as fit to witness for or against him on supposition the money was given to her in relation to that C matter. Being further interrogate for the presbytery, depones, That she never heard Mr Macmaster either in her own or her son's house, go under the name of Muir. Depones also, That while Agnes Smith was in the deponent's house, she the deponent did not look upon her as being a married, but a single person; and that D when Agnes Smith was questioned by some of the elders in the north quarter in the deponent's hearing, she, Agnes, did not say, that Mr Macmaster was father of the child, but affirmed that a young man in the parish of Monkland was the father of said child. Depones, upon the pursuers interrogatory, That Agnes Smith E gave her money to provide necessaries for her inlying, that is, for the meat and drink that was used that night she was delivered. And what she has deponed is truth, &c.

The presbytery think proper to take notice, that in regard the last witness was observed to subscribe her name Elisabeth Maxwell, F she was asked, what was her true name? and answered, That Elisabeth was her Christian name, and that the name she commonly passes under, is that of Elspeth, or Effey.

WILLIAM ANDERSON, cow-feeder in Salt-market, married, F aged 30 years, or thereby, witness admitted for the pursuers, being sworn, &c. *ut supra*, depones, That during the time Mr Macmaster resided in the family of Mr Hunter of Frankfield, the deponent likewise resided in that family, that Agnes Smith was also servant in the said family at the same time; the deponent G does not remember the precise year. Depones, That before Mr Macmaster left that family, he heard it reported, that Agnes Smith was with child. Depones, That when he first heard the said report, Agnes Smith herself was staying in the family. Depones, That

A That before either Mr Macmaster or Agnes Smith left the family, he heard it reported by Isobel Watt, Agnes's fellow-servant, that she Isobel suspected that Mr Macmaster was the person to whom Agnes was with child: And that the deponent having asked her, what reason she had to suspect so? she answered, That she had  
 B known Mr Macmaster and Agnes Smith to have been together oftener than once, in Mr Macmaster's room, at unseasonable hours. Depones, That the deponent himself never observed any unseemly carriage betwixt the said Agnes Smith and Mr Macmaster: That soon after this, Agnes Smith complaining she was  
 C not well, at the desire of Mrs Hunter, the deponent went along with Agnes Smith, who then rode to Glasgow, to the house of Mr John Muir Surgeon: That Agnes at that time brought along with her, a letter from Mrs Hunter to Mr Muir, wherein, as Mrs Hunter informed the deponent, she desired Mr Muir to enquire in-  
 D to the nature of Agnes Smith's ailment, and to acquaint her of his opinion about it. Depones, That when the deponent came to carry home the horse, on which Agnes rode to Glasgow, he asked at her, why she did not return home? and she answered, That as she was not well, and not able to work, she would not come home,  
 E till she would see if she turned better: That a very considerable time after this, the deponent saw Agnes Smith in the house of James Speirs, in Bunn's Wynd, with a child on her knee, which she acknowledged to be her own, but did not name the father. Depones, That in the month of February, or sometime in the  
 F spring, the deponent went to Glasgow with Agnes Smith, as said is. Depones, That Mr Macmaster left Mr Hunter's family a good while before the Whitsunday after Agnes Smith left it. And what he has deponed is truth, &c.

G JOHN MURRAY wright in Glasgow, married, aged 42 years, witness admitted for the pursuers, sworn, &c. depones, That he has known Mr Macmaster for about these six or seven years past: That the deponent knows that Mr Macmaster was in the family of Mr Hunter of Frankfield, as tutor to his children. Depones,  
 H That he the deponent was working in the way of his business in the house of Mr Hunter some part of the time Mr Macmaster was there, and that he left said house but a few days before Mr Macmaster left it. Depones, That Mr Macmaster told him the reason why he left Mr Hunter's family at the time he did, was, that Mrs  
 Hunter

Hunter had signified to him, that she suspected him to be the father of the child, which it was believed Agnes Smith was then pregnant with. Depones, That Mr Macmaster never did acknowledge to the deponent that he was the father of Agnes Smith's child; neither did he ever acknowledge that he was married to the said Agnes, either publicly or privately: That at different times B Mr Macmaster conversed with the deponent about the reports that was then going, of Agnes Smith's being with child to him; but that he neither asked nor received from him, the deponent, any advice how he ought to carry with respect to these reports. Depones, That before Mr Macmaster left Frankfield, and while the deponent C was returning to Glasgow, having finished his work there, Mr Macmaster desired and prevailed with him to go to Hamilton, where Agnes Smith then was, and be informed from herself, whom she then accused as father of her child; and that in case she mentioned another than Mr Macmaster, then to endeavour to prevail D with her to come to Glasgow. Depones, That when accordingly at Hamilton he enquired at Agnes Smith, who was father of her child? She, Agnes, did not so much as own that she was with child, but continued silent: That the deponent made no offers, nor had any authority from Mr Macmaster to make any, with design E to engage Agnes to go to Edinburgh to be delivered of the child when the time should be; and in particular, the deponent neither at that time engaged to Agnes Smith, nor had any authority from Mr Macmaster to engage to her, that on condition she went to Edinburgh to be brought to bed, Mr Macmaster would F advance money for her sustenance there, and for nursing the child: But the deponent acknowledges, that he himself proposed to Agnes, that she should go to Edinburgh and bear the child, but without any authority from Mr Macmaster to do so, or without any promise to her in case she agreed to that; and that the deponent was led G to do so from tenderness to the characters of Mr Macmaster and Mr Hunter of Frankfield, it being known to him, that some people alledged Mr Hunter was father to Agnes Smith's child, whilst others gave it to Mr Macmaster: Further, that the deponent had no occasion at that time to condescend on any means of subsistence H to Agnes Smith while she should be at Edinburgh, finding that Agnes would not acknowledge her being with child, as above deponed. Depones, That a short time after the deponent's being at Hamilton, as said is, Agnes Smith and her father were at Glasgow I together,



A together, and that the deponent was in company with them there, when Mr Macmaster being sent for, was also present. Depones, That in the conversation that then passed, Mr Macmaster asked her, whether she gave the child she was then pregnant with to him? And that she made no reply: That Andrew Smith, her father, B asked at them both, If there was a marriage between them? And that to this Agnes Smith made no answer; and Mr Macmaster answered negatively. Depones, That during that conversation, no marriage-lines between Mr Macmaster and Agnes Smith were produced or mentioned. Depones, That Mr Macmaster did not pay C the hire of the horse upon which the deponent rode to Hamilton. Depones, That Agnes Smith rode behind him, the deponent, when he returned to Glasgow; but he does not recollect whether she dismounted before they entered the town. Upon being interrogated, Whether he knows that Mr Macmaster, or any one in his name, D sent a letter express to bring Agnes Smith's father to Glasgow? depones, He knows nothing about any such letter, neither did the deponent, when at Hamilton, desire Andrew Smith to come to Glasgow after him: That at the conversation in Glasgow above mentioned, when Mr Macmaster, Agnes Smith, and her father, E were present with the deponent, he the deponent did say to Agnes Smith, that he thought it was best, that in case she knew herself to be with child, she should go to Edinburgh and be there delivered, and by that show her tenderness to the characters of Mr Hunter and Mr Macmaster; but that the deponent did not make any offer F of subsistence to Agnes Smith, in case she followed this advice, nor had any authority from Mr Macmaster to do so. Depones, That when at Hamilton, as has been deponed, he the deponent showed no letter or paper to either Andrew Smith or his daughter, in evidence of his coming to them with commission from Mr Macmaster. Depones. That in the conversation at Glasgow, above G mentioned and referred to, when the deponent proposed that Agnes Smith should go to Edinburgh, and be brought to bed there, Andrew Smith, her father, said, that if she was Mr Macmaster's wife, she might go where she pleased; and if she was not so, the H was still his daughter, and he would continue to have power over her, and not let her to Edinburgh. And being interrogate for the defender, depones, That the first time he heard of a father to Agnes Smith's child, and before Mr Macmaster left Mr Hunter's family, he heard a person, other than Mr Macmaster, given as the father of her child; and that this was a current report in that neighbourhood,

neighbourhood. Depones, That the first person he heard name A  
 Mr Macmaster as father of Agnes Smith's child, was Mrs Hunter  
 of Frankfield; and that when she informed the deponent that Mr  
 Macmaster was suspected to be the father of the said child, Mrs Hunter  
 did at that time desire the deponent to inform Mr Macmaster of this.  
 Depones, That while at Hamilton, Andrew Smith asked the de- B  
 ponent what business he had with his daughter? To which the de-  
 ponent answered, That it was currently reported she was with  
 child; and that two gentlemen were, by different reports, named  
 as fathers; and that the deponent wanted to be informed by her,  
 whether any of these gentlemen was the true father, or which of C  
 them was so: That at no conversation where Mr Macmaster and  
 Andrew Smith were present with the deponent, did he the depon-  
 ent hear Mr Macmaster proposing to Agnes to go to Edinburgh  
 to bear her child; nor did he hear Mr Macmaster, in any such  
 conversation, promising to be at the charge of nursing or educating D  
 the child, in case Agnes should go to Edinburgh. Depones, That  
 he was at that time an elder in the Barony kirk-session of Glasgow;  
 but now he has removed from that parish, and does not attend  
 their meeting. And being further interrogate by the pursuer,  
 Whether or not he knew of Agnes Smith's going to Galloway? E  
 depones, He knew nothing of it but by report. And what the  
 witness has deponed is truth, &c.

JANET WILSON, spouse to William Anderson, a former wit-  
 ness, aged 24 years or thereby.—Objected to by the defender, in F  
 regard she is cousin-german to Agnes Smith, therefore an inhabile  
 witness.—Answered, Agnes Smith is no party to this cause; but  
 although she were, and that the witness was really cousin-german  
 to her, it is no legal objection.—The witness being asked, Whether  
 she was cousin-german to Agnes Smith? Declares, she is.—The G  
 presbytery repel this objection, as insufficient to set her aside from  
 being examined in this cause.—Against which judgment of the Reve-  
 rend Prelbtery of Glasgow, the defender protested, and appealed  
 to the Reverend the Presbtery of Stranrawer; and if that Reverend  
 Presbytery should deem or judge, that the acts and deeds of the H  
 presbytery of Glasgow are their own acts or deeds, in that event,  
 the defender appeals to the very Reverend the Synod of Galloway  
 at their first meeting; and for reasons of appeal, repeats the wit-  
 ness's acknowledgement of her being cousin-german to Agnes  
 Smith,

A Smith, who it was obvious was a principal party in this cause; reserving liberty to urge such other reasons as should be thought proper when the matter comes to be heard at the bar of the reverend presbytery or synod.—The presbytery, notwithstanding the appeal, proceed to examine the witness.

B The said Janet Wilson being solemnly sworn, purged of malice and partial council, and examined, depones, That she has been acquainted with Mr Macmaster since the time he staid in the house of Mr Hunter of Frankfield, and has known Agnes Smith of a much longer time: That the deponent was a servant in Mr Hunter

C of Frankfield's family at the same time when Mr Macmaster was tutor to the children there, and Agnes Smith was a fellow-servant there with the deponent at the same time: That one Isobel Watt, then her fellow-servant in Mr Hunter's house, informed the deponent, that she believed Agnes Smith to be with child, and

D that this was the first notice the deponent had of Agnes's pregnancy: That the said Isobel Watt told the deponent further, that she apprehended Mr Macmaster was father of the child that Agnes Smith was pregnant with: That others of the servants in Mr Hunter's family told the deponent, that they had the like apprehen-

E sion as to Mr Macmaster and Agnes Smith: That the deponent had both observed herself, and been informed by Isobel Watt, that Agnes Smith was with Mr Macmaster in his room at unseasonable hours, after the rest of the family were in bed, at different times; and that, on this account, the deponent more readily

F believed that the report of Mr Macmaster's being the father might be true. Depones, That, she did not observe herself, nor did she hear from any others, of Mr Macmaster and Agnes Smith their being together by themselves in any other place than Mr Macmaster's room. Depones, That her fellow-servant, Isobel Watt, in-

G formed the deponent, while they were both fellow-servants in Frankfield, that she, Isobel Watt, had seen Mr Macmaster and Agnes Smith in bed together in his room, and that she had done so oftener than once; but the deponent does not remember that Isobell Wat informed her, that at these times they had put off their

H clothes. Depones, That at the time Agnes Smith left Mr Hunter's family, the deponent was informed by Mrs Hunter, that she had sent the said Agnes to Glasgow with a letter from her to Mr John Muir surgeon, desiring him to enquire into the nature of the complaint of want of health, which Agnes Smith made at that time,

and



time, and to acquaint her of his opinion about it. Depones, That Mrs A Hunter had not parted with Agnes Smith at that time, and that it was expected she should have returned to her service in Frankfield; but that Agnes Smith did not return to Frankfield to serve there any longer: That William Anderfson, presently husband to the deponent, then a fellow-servant with her in Mr Hunter's family, went along from Frankfield to Glasgow with Agnes Smith, when she said Agnes went with the letter to Mr Muir; and that the said Agnes rode at that time: That some time after, Mrs Hunter informed the deponent, that Doctor Muir wrote her, in answer to her letter aforesaid, that he believed Agnes Smith to be C with child. Depones, That to the best of her remembrance, Mr Macmaster did not continue very long in the family after Agnes Smith left it, as said is. Depones, That she was informed, that before Mr Macmaster left the family, Mrs Hunter had signified to him, that it behoved him to get himself cleared as to the report D going concerning him, that he was father of Agnes Smith's child, or else to depart out of her family; and that Mr Macmaster staid but a short time in the family after the time that Mrs Hunter did so speak to him, according to the information given her, the deponent. Depones, That after Agnes Smith had left Frankfield, and E whilst Mr Macmaster continued there, the deponent being still at that place, did one day speak with Mr Macmaster, when none others but they two were present; and heard him say, "He would not see that woman wronged." Depones, That he did not then mention Agnes Smith to be the woman he meant; but that the F deponent applied the words to her, as she had been mentioned a little before. Depones, That several months after Agnes Smith had left Frankfield, the deponent heard that she had born a male child in Glasgow. Depones, That when Isobel Watt told the deponent she had seen Mr Macmaster and Agnes Smith in bed together in G his own room, and that she had done so oftner than once, she, the said Isobel, added, that the family were in bed at these times, and what she has deponed is truth, &c.

JOHN MILLROY, merchant in Glasgow, married, aged 42 years H and upwards, witness admitted for the pursuers, being sworn, purged of malice and partial counsel, and examined, depones, That he was acquainted with Mr Macmaster from his childhood, but has no acquaintance of Agnes Smith. Depones, That he was

informed,

K

A. informed, that Mr Macmaster had left Mr Hunter of Frankfield's house very soon after the time he did so, as the deponent came soon after to know with certainty, from Mr Macmaster himself. Depones, That Mr Macmaster informed him only in general as to his reason of his leaving Frankfield, that it was on account of a  
 B. difference that happened between Mr and Mrs Hunter and him. Depones, That sometime after Mr Macmaster left Frankfield, he told the deponent, that he understood it was reported, a woman who had been a maid-servant in Mr Hunter's house, while he was there, was with child, or had born a child; and further,  
 C. that it was reported likewise, that he Mr Macmaster was father of that child. Depones, That at no time did Mr Macmaster acknowledge to the deponent, that he had been guilty with Agnes Smith, or any maid-servant that had been in Mr Hunter's family; or that any such person was with child, or had bore a child to  
 D. him. Depones, That neither at any time did Mr Macmaster ask advice from him the deponent, nor did he offer him advice how to carry with respect to the report going of his being father of a child born, or to be born, by a woman who had served in Mr Hunter's family. And what he has deponed is truth, &c.

E.

JAMES BURNS, weaver in Glasgow.—Objected by the defender, That he was, upon the 18th December 1770, recommended to the poors-house in the city of Glasgow, by the reverend Mr John Hamilton one of the ministers of said city, and put therein, as disordered in his judgment, and unfit to earn his bread; and that he still remained in the same disordered state of mind, as appeared by a certificate signed by Patrick Crookshanks, clerk and master to the said poors-house or hospital, bearing date the 30th day of September last, in the year 1771; and upon that account is an inhabile  
 F. witness, and ought to be rejected: Which certificate is now produced, and lodged in the clerk's hands.—To which it was answered by the pursuers, There is so little importance in the objection made against the witness, that the pursuers are humbly of opinion, that it merits no answer. The law of this country has ordained, that  
 G. every fact must be established by two concurring witnesses, which is far from being the case here. There is nothing that in the least gives shadow to the objection, but a paper produced, said to be signed by one Mr Crookshanks, a person in the eye of the law utterly  
 H.

terly unknown, and signed by him too without any warrant, and A  
 so quite extrajudicial. The pursuers cannot see what intitles this  
 Mr Crookshanks to be the sole judge of the sanity of a man, more  
 than any other single person; and that no other single person's opi-  
 nion could be so much depended upon, as to set aside a person, B  
 whom he might wantonly pronounce insane, from bearing evi-  
 dence in a cause, will not be denied, if the defender would remem-  
 ber his own doctrine, that it is *pars judicis*. The reverend presby-  
 tery have the opportunity of seeing this witness behaving as regu-  
 larly and soberly as any of those before examined in the cause. The  
 pursuers therefore have no doubt that the objection will be repel- C  
 led, and the witness received.—Replied by the defender; Mr  
 Crookshanks, who signed the certificate, is known to the members  
 of the reverend presbytery present, to be a man of probity and un-  
 blemished character, had the best opportunity of knowing the state  
 and condition of James Burns's state of mind, as from his office D  
 he behoved to see and converse with him every day; and it was  
 wanton, and against good manners, to alledge any thing to the  
 contrary; and therefore, the answers should be repelled, and the  
 witness rejected.—The presbytery, after considering the above ob-  
 jections, and the answers made to it, with the reply by the defen- E  
 der, and the certificate by Mr Crookshanks produced, agreed una-  
 nimously not to set aside the witness from being examined, in re-  
 gard the certificate, which is the only foundation of the objection,  
 is no legal evidence of the alledged insanity; and that such a cer-  
 tificate as might be considered legal evidence in this case, ought to F  
 have been signed by the surgeons who have the care of the hospi-  
 tal. The defender further objected to the witness's being recei-  
 ved, That being maintained in the poors-house or hospital, and re-  
 commended thereto, as being unable to work for his bread, it is  
 evident he is not worth the King's unlaw; and therefore, by act G  
 of parliament, an inhabile witness. The pursuers will leave it  
 with the reverend presbytery, how far this second objection comes  
 with a good grace from the defender, as well as the relevancy  
 thereof.

The presbytery agree unanimously to repel this objection. H

The said James Burns, widower, aged 41 years, or thereby,  
 being called and brought before the presbytery, he soon discovered  
 such marks of disorder in mind, as led the presbytery to agree un-  
 animously to dismiss him.

SECOND



## SECOND PROOF led before the PRESBYTERY of GLASGOW.

N. B. The witnesses cited by the presbytery having failed to compear at the first diet, the presbytery appointed another meeting, and ordered them to be summoned *pro secundo*. Against this continuation of the diet of proof, the procurators for Mr Macmaster protested, alledging, That the commission from the presbytery of Stranrawer, under which the presbytery of Glasgow acted, did expressly bear, that said presbytery of Glasgow should examine the witnesses mentioned in the commission at their present meeting, beyond which time they had no power to act, and that any procedure after said meeting should be void and null: To which it was answered by the procurator for the pursuers, That as the commission had been accepted of by the presbytery, and that the witnesses who were summoned had not compeared; therefore, the presbytery were fully authoris'd to continue and prorogue the commission, which, without such prorogation, will be entirely useles.

A COMPEARED JOHN ROSS, shoemaker in Trongate, or Westergate, a witness for the prosecutors, aged 46 years, married, who being solemnly sworn, purged of malice and partial counsel, and examined, depones, That he has been acquainted with Mr Macmaster, and Mr William Gilfillan merchant in Glasgow, for these ten or twelve years past. Depones, He has heard, that there had been a dispute betwixt the people in the parish of Port Patrick and Mr Macmaster, relative to Mr Macmaster's settlement. Depones, That he did not see the said Mr Gilfillan give money to any person whatever, who was a witness in this cause: And particularly, he did not see him give money to James Speirs, Jean Niven his wife, and Effey or Elisabeth Maxwell his mother, witnesses in Glasgow, and Margaret Riggs at Hamilton, another witness in this cause. And being further interrogate, If ever Mr William Gilfillan had told him, that he, Mr Gilfillan, had given money to any of the above-named persons? To which he answered, He had. And being

being asked, If Mr William Gilfillan had given money to all the A  
 above persons, or to which of them he had owned his giving it? Answered, That Mr Gilfillan told him, he had given money to James Speirs, his wife, and his mother-in-law, and to Margaret Riggs; and he heard, that these persons, of whom Mr Gilfillan spoke, had been witnesses in this cause before the presbytery of B Glasgow. Depones, That he had seen a letter to Mr Gilfillan, pressing him to give the said money to the foresaid persons; but the letter was not signed by any person, as the deponent thinks. Depones, That he has had a correspondence in writing with Mr Macmaster; and that the letter he saw, appeared to him to be of C Mr Macmaster's own hand-writing; and Mr Gilfillan told him, that the said letter was from Mr Macmaster. Depones, That William Gilfillan told the deponent, that he, Mr Gilfillan, had given the money, as said is, at the desire of Mr Macmaster, or his friends. And being further interrogated, Where this communing D betwixt Mr Gilfillan and the deponent happened, and if any other persons were present? depones, That such communing often happened between Mr Gilfillan and the deponent, and that John Clark manufacturer, then in Glasgow, now at Carmyle, was present at one of these communings at least. And being further interrogate, E If Mr Gilfillan had told him for whose benefit and advantage he had given that money to the above-mentioned persons? Answer, That Mr Gilfillan told him, that he had given the money to the said persons, with a view to destroy their evidence against Mr Macmaster in this cause. And being interrogate, If he had received F an account from Mr Gilfillan, wherein Mr Macmaster was charged as debtor for the money Mr Gilfillan had given to the above persons? depones, That some time in the month of May last, he received a letter, with a bill, accepted by Mr Macmaster, from Mr Gilfillan, in order to receive payment from Mr Mac- G master, when he, the deponent, was going into Galloway to see his friends. And being further interrogate, depones, That Mr Gilfillan told him, that the bill was on account of the money which he had given to the above persons; but which bill, he, the deponent, did not receive payment of, as Mr Macmaster was then H gone in to Edinburgh to the Assembly. And depones, That he, the deponent, does not remember what the sum contained in the bill was. And being further interrogated, depones, That he brought back the letter and bill to Mr Gilfillan; and thinks, but is not L positive,

- A positive, that Mr Gilfillan has since told him, that he had got part of the money paid him by Mr Macmaster; and upon the deposition being read over to the witness, he desired it to be marked, that he is not positive whether Mr Gilfillan told him, that he gave a piece of money to each of Speirs and his wife, or only a piece of money  
 B betwixt them. And being further interrogated, depones, That the letter which he saw in Mr Macmaster's hand-writing, contained, as the reason why money should be given by Mr Gilfillan to the forefaid persons, that it would destroy their evidence against him; for, if they were prevailed upon to take money, it would do much  
 C for his cause, otherways he was afraid it would go against him, or words to that purpose. And what he has deponed is truth, &c.

- The procurators for Mr Macmaster protested, That in regard, after the following interrogatory to the immediately preceding witness was put down in writing, viz. " If ever Mr William Gilfillan  
 D " had told the deponent, that he, Mr Gilfillan, had given money " to any of the above-named persons?" And before the answer to this question was put down in writing, Mr Macmaster's procurators offered to state objections against the competency of this, and  
 E every other question that might be asked the witness, relative to the subject of any private conversations that had subsisted between him and Mr Gilfillan; which objections the presbytery refused to be allowed to be minuted at that time: That therefore every answer given by the witness to interrogatories with regard to the above  
 F private conversations, should be held as if the same had not been made, for the following reasons. In the *first* place, The express terms of the commission by the presbytery of Stranraver to this presbytery, are, " That they desire and ordain the reverend pres-  
 G " bytery of Glasgow to confine the whole *proof* now to be taken " entirely to these *facts*, viz. If said Mr Gilfillan gave money to " said witnesses, for whose interest, and at whose desire he did so?" And in the *next* place, It is incompetent to put any question to a witness, relative to the subject of a private conversation which hath passed between him and a third party, unless the same relate either  
 H to treasonable machinations, or be injurious to the good fame of another person; but in every other case, it is incompetent for any court to cause a witness divulge the subject of private conversations. In private conversation consists a great part of the happiness of human



man life ; and if a person was obliged to disclose that, it would A  
be dissolving all trust and confidence among men, and fill their  
minds with a mutual jealousy of each other ; and thereupon took  
instruments.

To which it was answered by the presbytery, That the procura-  
tor for Mr Macmaster did indeed say, while that interrogatory B  
was a-writing, That they had an objection against it ; but the  
presbytery would not receive it at that time ; because the interro-  
gatory had been agreed to by the court, put to the witness by the  
moderator, and an answer returned to it by the deponent, before  
such objection was made : That after that interrogatory and an- C  
swer were taken down, the presbytery never precluded the procu-  
rators for Mr Macmaster from moving, and entering into their mi-  
nutes, whatever objections they might think proper about following  
interrogatories ; but nothing of that kind was attempted ; and  
that the presbytery thought themselves fully authorised, by their D  
commission, to put interrogatories as above, upon private conversa-  
tion. The presbytery observed further, That it has been allowed  
in the objection itself, made at this time, that it is a fair exception  
from the general rule, of its being improper to expiscate by oath  
what has passed in a private conversation, if it appears that the E  
doing this is necessary for the vindication of character ; and it ap-  
pears to the presbytery, that this very case exists here, in regard it  
has been alledged by Mr Macmaster and his procurators, that his  
libellers were chargeable with being the authors of any practising  
that has been used with the witnesses that has been adduced against F  
him ; and therefore it concerned the vindication of Mr Macma-  
ster's libellers from this charge, that any evidence which might a-  
rise from the private conversation now in question, might be addu-  
ced by a judicial inquiry into what passed in it.---Replied for Mr  
Macmaster, Private conversation was never intended to be discover- G  
ed, or made evidence against any person ; and it was the part of the  
presbytery to have known so much, as they very well knew, that  
by acts of their superior Court, such had been refused to be ad-  
mitted as evidence, or asked at any witness ; and in the present  
case, it was impossible for the procurators for Mr Macmaster to H  
make an objection appear in the minutes, until the question was  
put down in writing ; and the objection was made as soon as it was  
put down in writing ; and a vote of the presbytery was demanded,  
Whether the objection should be received or not, before the an-  
swer

A swer to the question was written? which vote was also refused or allowed to be marked in the minutes : And the procurators for Mr Macmaster had no other remedy than to enter their objections after the oath was concluded.---The presbytery, as a duply, referred to their answers above.

B

WILLIAM GIFFILLAN merchant in Glasgow, a witness for the pursuers—The moderator having informed Mr Gilfillan, that he was called in consequence of a commission from the presbytery of Stranrawer, to bear testimony in a process before that presbytery, C against Mr Macmaster, Mr Gilfillan said, That he wanted such questions as were to be proposed to him put into writing, that he might consider them; to which the presbytery answered, That as the demand is wholly unprecedented, they cannot grant it, but will do all justice to Mr Gilfillan in the questions they shall propose, D which shall be marked in their record, from which he will have access to get an extract, if he chuses, thereafter. The moderator was proceeding to take Mr Gilfillan's oath, but he refused to give oath in this cause, unless his forementioned demand was granted; and although the presbytery had taken pains with him E in representing the folly and danger of his conduct, yet he pertinaciously adhered to his refusal to give oath in this cause; and as he was going to leave the court, the moderator summoned him *apud acta* to the meeting of presbytery next day.

The presbytery took under their consideration Mr William Gilfillan's unprecedented and foolish conduct, and agreed to apply to the magistrates of Glasgow, that they might interpose their authority for bringing him before them, and obliging him to depone, &c.

The said William Gilfillan having compeared again at an after-diet, G gave in a demand in writing, and insisted it might be ingrossed in the minutes; and of which demand the tenor follows: " I desire it may be marked in the minutes, before I give my oath, " that no question that will tend to be an accusation against myself, nor yet any question relating to any private conversations, H " shall be asked at me."

The presbytery observed, that it was very extraordinary and unprecedented in a witness to pretend to capitulate with a court, before which he is called to give evidence for the discovery of truth, which

which is all the notice which deserves to be taken of Mr Gilfillan's A demand.

Thereafter, the said William Gilfillan, unmarried, aged 20 years and upwards, being solemnly sworn, &c. depones, That he is a little acquainted with Mr Macmaster, the defender in this cause; and he has heard that a process was raised at the instance B of the inhabitants of the parish of Port Patrick against the said Mr Macmaster, which is presently depending before the presbytery of Stranrawer. Depones, That some years ago he wrote letters to Mr Macmaster, and received answers to these from him. And being interrogate, If or not he received a letter, which he believed C to be of Mr Macmaster's hand-writing, pressing, or desiring him, the deponent, to give money to James Speirs and his wife, to Effey or Elifabeth Maxwell his mother, and Margaret Riggs? It was objected by the procurators for Mr Macmaster, That this interrogatories is *ultra vires* of the Commissioners, as conferred by the pres- D bytery of Stranrawer; and the question is also incompetent in itself, in as much as it requires the witness to divulge the contents of a private letter, being in effect a conversation between him and the writer, carried on by the medium of writ; and, as has been already observed in Mr Macmaster's protest, dated 5th day of May E current, it is incompetent for any court to make private conversation the subject of judicial investigation, otherwise it would put an end to what has ever been held the most agreeable species of hospitality: To which it was answered for the presbytery of Stranrawer, That, as the question put, takes its rise from, is included in, F and absolutely connected with, the commission itself, which cannot be executed without asking such and the like questions, as therein mentioned; and that the objection is, from its own showing, *felo de se*, and totally absurd; it therefore ought to be repelled, and the question put. The presbytery having considered the question, G objection, and answers, repel the objection, and appoint the question to be put to the witness. And the question having been put to the witness, he depones, That he did not receive a letter which he believed to be of Mr Macmaster's hand-writing, or desiring him, the deponent, to give money to James Speirs and his wife, to Effey or Elifabeth Maxwell his mother, and to Margaret Riggs. And being further interrogated, If or not he was desired by Mr Macmaster, or any of his friends, to give money to James Speirs and his wife, to Effey or Elifabeth Maxwell his mother, and Margaret Riggs? M Riggs?



**A** Riggs? The deponent refused to answer the above question, as he was afraid of accusing himself, and thought it improper. And being further interrogate, If or not he showed to Mr John Rofs, shoemaker in Glasgow, an unsigned letter or paper, desiring him, the deponent, to give money to the witness, as mentioned in the

**B** commission? depones, He does not remember of showing any such letter or paper to Mr Rofs. And being further interrogated, Whether he ever saw a letter or paper, that he believed was Mr Macmaster's hand-writing, containing such expressions: That if James Spiers and his wife, Effey or Elisabeth Maxwell his mother,

**C** and Margaret Riggs. could be prevailed upon to take money, it would destroy their evidence against him, and be of great advantage to him in his cause; but that if they did not take money he feared it might go against him, or words to that purpose? depones, He never saw such a letter or paper. And being further interro-

**D** gate, If ever he heard Mr Macmaster, or any of his friends, use such expressions as these, That if James Speirs and his wife, Effey or Elisabeth Maxwell his mother, and Margaret Riggs, could be prevailed upon to take money, it would destroy their evidence against him, and be of great advantage to him in his cause; but if

**E** they did not take money he feared it might go against him, or words to that purpose? The deponent answered, That he was not obliged to answer that question. And being further interrogate, Whether he wrote a letter to Mr Macmaster, and sent it to him by Mr John Rofs, shoemaker in Glasgow, some time in the month of

**F** May last year, with a bill or open account, or promissory note, and desired him to get payment thereof from Mr Macmaster? depones, That he did send a letter along with Mr Rofs with an accepted bill, or a draught, upon Mr Macmaster, he does not remember which; and that this was some time in summer last, but

**G** does not remember whether in May, June, July, or August. Depones, That Mr Rofs told him upon his return, that Mr Macmaster was not at Stranrawer, at the time he, Mr Rofs, went there, upon which account he did not deliver the letter, and thinks that Mr Rofs also told him, the deponent, that Mr Macmaster

**H** was at this time gone to the General Assembly. Depones, he does not remember the precise sum in the bill or draught, but thinks it was below 5 l. Sterling; and being interrogate, if the money contained in said bill or draught, had been laid out by him for Mr Macmaster's behoof? the deponent refused to answer that question.

question. And being further interrogate, if he had given money <sup>A</sup> to James Speirs, Jean Niven his wife, Effey or Elisabeth Maxwell, his mother in Glasgow, and to Margaret Riggs in Hamilton, or to any one of them? the deponent refused to answer that question. And being further interrogated, if he did give money to the said persons, for whose sake, and at whose desire he did so? the <sup>B</sup> deponent refused to answer that question. And being further interrogate, Whether or not he the deponent, has, within these three years, corresponded with Mr Macmaster in writing, or otherwise, relative to his settlement at Port Patrick? The procurators for Mr Macmaster objected to this question, That it is extrinsic, being not <sup>C</sup> warranted by the terms of the commission. The presbytery repel the objection, and appoint the question to be put to the witness; and the question being put, the deponent refuses to answer the question. And being further interrogated, if or not he was in company with the said James Speirs, Jean Niven, and his wife Effey, or <sup>D</sup> Elisabeth Maxwell, his mother, and Margaret Riggs, and asked them what they knew about Mr Macmaster and Agnes Smith's being married, and cohabiting together, and other things relative thereto; and of Mr Macmaster's settlement at Port Patrick, and what conversation they had at these meetings upon these subjects? The <sup>E</sup> procurator for Mr M'master stated to the commissioners, that this question was liable to the same objection that was offered against the immediate preceding question. The presbytery repel the objection, and agree to put the question striking off the last clause, *viz.* what conversation they had at these meetings upon these <sup>F</sup> subjects, and appoint the question to be put accordingly. The question being put, the deponent refuses to answer the question, and what he deposed is truth, &c.

After Mr Gilfillan had signed his oath, and before he was allowed to withdraw, it was observed by the members of court, <sup>G</sup> that his conduct, through the whole of his examination, had been most offensive, and shocking; that he had not only refused to answer many questions wherein his own character was no manner of way concerned, but had refused to declare the truth, if or not Mr Macmaster or his friends had desired him to practise so far with the <sup>H</sup> witnesses in this cause, as to give them money, upon which account it was observed, that his conduct deserved very high censure, and that he, in the mean time, ought to be sharply rebuked, for his said behaviour on oath. And the question being put, it was unanimously

A unanimously resolved by the court, that, the moderator, in their name should sharply rebuke him, which was accordingly done.

JOHN CLARK widower, overseer of a weaving factory at Glasgow, a witness for the pursuers, aged 40 years, being solemnly  
 B sworn, purged of malice and partial counsel, and examined, depones, That he knows Mr William Gilfillan merchant in Glasgow. Depones, That he never saw Mr Gilfillan give money to James Speirs, or his wife, or his mother, or to Margaret Riggs, nor does he know any of these persons. Depones, That Mr Gilfillan  
 C never told the deponent, so far as he remembers, That he, Gilfillan, was desired to give money to any of the foresaid persons. And being interrogate, if ever Mr Gilfillan had told him, that he had been desired to give money to any person or persons, for behoof of Mr Macmaster, in the process depending  
 D before the presbytery of Stranrawer, against him at the instance of the inhabitants of the parish of Port Patrick? The procurators for Mr Macmaster object against the competency of this question: That the terms of the commission, appointing questions to be put with regard to Mr Gilfillan's giving money, are restricted to the witnesses  
 E particularly therein named, and no latitude is given to persons in general. The Presbytery repell the objection, and appoint the question to be put; and the question having been put to the witness, he depones, That Mr Gilfillan never did acknowledge, as in said question. And being further interrogate, Whether he was  
 F ever in company with Mr Gilfillan, and Mr John Ross shoemaker in Glasgow, when the subject of conversation was the giving money to persons who were expected to be witnesses in Mr Macmaster's process? The procurators for Mr Macmaster oppose the former objection.—The presbytery repel the same, and appoint the  
 G question to be put.—The question being put, depones, That he has been in company with Mr Ross and Mr Gilfillan, but does not remember of ever hearing it as a subject of conversation, when he was in their company, the giving of money to any person or persons who were expected to be witnesses in Mr Macmaster's cause.  
 H And being further interrogated, If ever Mr Gilfillan in his, the deponent's hearing, said, that he had given money to the above mentioned persons, or any other persons who were to be witnesses in said cause, or had given a promise of money to them, or any of them?—Objected by Mr Macmaster's procurators, That by the terms  
 of



of the commission, the proof to be taken is required to be confined to the direct fact of Mr Gilfillan's giving money, and not extended to any thing that Mr Gilfillan should acknowledge in conversation that he had done.—To which it was answered, As the question is in the sense and explanatory of the commission, it is therefore pertinent, ought to be put, and the objection repelled.—  
 The Presbytery repel the objection, and appoint the question to be put, which was accordingly done; and the witness depones, That he heard Mr Gilfillan say, he had given money to a woman in Hamilton; but whether it had any relation to Mr Macmaster's process, the deponent cannot say. And being interrogated, At what time he heard Mr Gilfillan had given money to a woman in Hamilton, and if there was any conversation relative to the settlement of Port Patrick, and if Mr Macmaster's name was then mentioned? depones, That as to the season of the year, he thinks it was in winter; and happening to meet with Mr Gilfillan, and having asked him where he was going, Mr Gilfillan answered, That he was going to Hamilton, to give a woman there a little money; but does not remember any more of the conversation that happened at that time. And being further interrogate, If the deponent, at any meetings had with Mr Gilfillan, had been shown by him any letters of correspondence, or orders from Mr Macmaster, desiring Mr Gilfillan to give money to James Spiers, his wife, Effey Maxwell, and Margaret Riggs, or any of them, or to any other persons, as witnesses in this cause?—Mr Macmaster's procurators objected, That the foregoing question is extraneous to the matter in issue, and not warranted by the terms of the commission.—To which it is answered, That the objection is frivolous, and that the question is entirely connected with the matter in issue; the objection ought therefore to be repelled.—  
 The Presbytery repel the objection, and the question being put, the witness depones *negative* to the question; and what he has deponed is truth, as he shall answer to God. And being further interrogate upon the desire of Mr Macmaster's procurators, If he has been long acquainted with Mr Gilfillan, and if he has had an intimate acquaintance with him? answered, That he has been acquainted with him these ten or twelve years past, and during that time has had a good deal of correspondence with him, and were always friends when they met. And this is also truth, &c.

**A** JOHN DOLLAR and ANNE JACK, witnesses for the defender, being called, John Dollar appeared; but Anne Jack did not appear, although an execution was produced against her, personally apprehended. The procurators for Mr Macmaster declare, that they have no use for them on the present occasion, nor during the continuance of this commission; and declare, that the executions of citation, produced by these witnesses, were not procured by Mr Macmaster or them, or by any other person having authority from him or them.

The presbytery considering that Mr Macmaster applied to the presbytery of Stranrawer for having these witnesses examined, and that the said presbytery have commissioned and impowered this presbytery to cite and examine them for the said Mr Macmaster, are unanimously of opinion, that Mr Macmaster's procurators must either consent to their being examined presently by this presbytery, or pass from them altogether; and that this presbytery does not fully execute the trust committed to them by the presbytery of Stranrawer, if they acquiesce in the delay of the examination of these witnesses to another time and place. The presbytery therefore proposed to the procurators for Mr Macmaster, that the only one of these witnesses now present, viz. John Dollar, should be examined immediately; but the procurators affirmed, that they adhered to their declaration above mentioned; and thereupon abruptly left the house.

And with respect to Anne Jack, the only other exculpatory witness, the presbytery finding that she had been cited three times before them, and had not appeared, declared her contumacious.

**G** PROOF led before the PRESBYTERY of STRANRAWER.

**H** COMPEARED ELISABETH MACWILLIAM in High Glenstockeidale, a witness for the prosecutor, aged 35 years, unmarried, who being solemnly sworn, purged of malice, partial counsel, and interrogate, depones, That being a servant near Hamilton, she became acquainted with Andrew Smith, father to Agnes Smith; and after Agnes Smith's return from Galloway,

loway, she became acquainted with herself, and received a letter A from said Agnes Smith at Hamilton, directed to Mr Macmaster, as Margaret Riggs, who wrote the letter, and Agnes Smith informed her : That Agnes Smith charged her to give the letter to none but Mr Macmaster's own hand, and accordingly she did deliver it to him at Saulseat. Further depones, That Mr Macmaster B at that time gave her, the deponent, a shirt of his own, to be carried to Agnes Smith ; That he gave her the shirt somewhere between Lord Stair's deer-park and kirk of Inch ; and that this happened the Tuesday after the sacrament of Inch-harris, about five years past in summer, to the best of her knowledge. Further de- C pones, She delivered the letter to Mr Macmaster the preceding Monday ; and that he desired her to meet him the next day, when he gave her the shirt. And further depones, That he took his his name out of the shirt before he gave it to her. Further depones, That Agnes Smith desired her, the deponent, to tell Mr Macmaster D to send her some money, which she accordingly did ; and that he answered, he could send her none at that time. Further depones, That said Agnes Smith desired her, the deponent, to tell Mr Macmaster, that if he did not send her money, she would come with the child into Galloway, and put him out : That upon delivering E this message to Mr Macmaster, he desired her, the deponent, not to let Agnes Smith come ; for if she should, he would run off with his license before it was taken from him ; and that he begged her, the deponent, for God's sake, to do this. And further depones, That all this passed between her, the deponent, and Mr F Macmaster, at the time she got the shirt from him. Further depones, That when she left Hamilton, Agnes Smith gave her directions how to find Mr Macmaster's father's house, by telling her, that it was below the wood of Park ; and that there was a large stone, or louping-on stone, at the end of the house. Further de- G pones, That said Agnes Smith told the deponent, while she staid under the wood of Park, Mr Macmaster gave her money, as he could spare it, from time to time, but could not give her much ; and that she never heard Agnes Smith say she had received any necessities from Mr Macmaster's father's house. Further depones, H That Mr Macmaster, at their meeting, asked her, the deponent, How the child was ; and whether it was a thriving child ; or if it was like him ? And that she the deponent answered, The child was very like him. Further depones, That when Mr Macmaster gave



A gave her the deponent the shirt, he desired her to tell Agnes Smith to make shirts to the child out of it, for he had no other cloth to send her; for that Agnes Smith had desired her the deponent, to tell Mr Macmaster to send some cloth to make some shirts for the child. Depones, That Mr Macmaster further told her at said meeting, that it was against his will Agnes Smith returned to Hamilton: That he had rather she had gone towards Stonykirk or Kirkneuden, because he could have sent her any thing he could supply her with much easier to either of these places than to Hamilton: And the said Mr Macmaster further told the deponent, C that he wondered how Agnes Smith could expect he was able to send her money, considering that she knew he had money to pay in Glasgow for what he had borrowed to support him and her in Glasgow before she came into Galloway: And further, he told her the deponent, that Agnes Smith knew the man he had borrowed D the money from, viz. from one Murray in Glasgow. Further depones, That said Mr Macmaster told her at the same time, that he thought a very little money from him might serve Agnes Smith now, as the child was not now very young, but she might work beside it: To which she the deponent answered, That Agnes Smith E could do little that way yet, but that he knew the age of the child better than she did: That he the said Mr Macmaster told her, the deponent, both the month and day of the month the child was born in; adding, that he needed never forget it; but that she the deponent does not now remember either the month or day. Depones, That Mr Macmaster further told her, at the same time and F place, that he expected to get bread soon in Stranrawer; and that she, the said Agnes Smith, should have part of it, as soon as he himself got it. Further depones, That some time after that she the deponent returned to Hamilton, she saw Margaret Riggs take a G guinea-note out of a letter, which she the said Margaret Riggs told her that she had got from Mr Macmaster to give to Agnes Smith: That she heard the letter inclosing the note read by Margaret Riggs, and that she remembers that the writer of the letter desired her, viz. Agnes Smith, to be careful of what he had now sent, for that H she would not receive any more from him for a long time, or words to that purpose; and that Margaret Riggs told her, that the letter was from Mr Macmaster, and intended for Agnes Smith. Further depones, That Agnes Smith desired her the deponent, to ask marriage-

marriage-lines from Mr Macmaster ; and when she did so, he, A  
*viz.* Mr Macmaster, said, he would give them to none but to Agnes  
 Smith herself ; and if she, *viz.* Agnes Smith, were here, he would  
 give her any thing she would ask. Further depones, That she de-  
 livered the shirt Mr Macmaster gave her, to Agnes Smith, before  
 Margaret Riggs, and (as she thinks) some other woman : That Ag- B  
 nes Smith expressed great uneasiness at not having received any  
 money. And further depones, That Mr Macmaster desired her to  
 tell Agnes Smith, to back no more letters to him with a woman's  
 hand, for that they had been seen lying in the post-office by Mr  
 Coulter, who had told him to go and take it, *viz.* the letter, out C  
 of the post-office ; for that it was a shame to see a letter to him,  
 backed with a woman's hand, lying so long in any office ; and she  
 the deponent says, she delivered this, and all the other messages  
 Mr Macmaster gave her, to Agnes Smith, upon her return to Ha-  
 milton. The deponent further depones, That after this, some of D  
 Agnes Smith's letters to Mr Macmaster were backed by James  
 Smith weaver in Hamilton ; and she the deponent carried one  
 letter to James Coventry, her master's son, and caused direct it  
 to Mr Macmaster, but knows nothing of the contents of it. Fur-  
 ther depones, That to her certain knowledge, Agnes Smith was in E  
 Galloway Candlemas was a two years, and also June was a year ;  
 for said Agnes Smith told her the deponent, that she had been in  
 Galloway, asking marriage-lines and money from Mr Macmaster,  
 but that she had got no lines ; but said nothing satisfactory to the  
 deponent about money : And that she the deponent says, that F  
 this should have happened at the time she, Agnes Smith, went in-  
 to Galloway, about Candlemas was a two year. Further says,  
 That she did not see Agnes Smith when in Galloway June was a  
 year ; but heard from John Jamieson in Parkhead, in Lefswalt pa-  
 rish, that she had been in his house, and had asked for her. The G  
 deponent further depones, that Margaret Riggs told her, that she  
 had been three different times in Galloway, twice with Agnes  
 Smith, and once by himself ; and that when she came by herself,  
 she came to ask marriage-lines from Mr Macmaster to Agnes  
 Smith ; but said, she got neither lines nor money. *Causa scientia H*  
*patet, &c.*

Mr ARCHIBALD NAESMITH, merchant or tanner in Stranraw-  
 O er,